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PLINGS—PROCEEDINGS

DATE		PLINGS—PROCEEDINGS
1-19-65	#1	Fil complaint w/bond for costs and petition w/judgement therefor authorizing parents and guardians of minors to maintain this action as next friends. Iss summons and handing to Marshal - orig. and 2 cys of complaint, petition and judgement. Iss JS 5
1-22-65	#2	Fil summons returned executed by Marshal by serving David M. Harris and Dr. A. Craig Phillips on 1-19-65
2-5-65	#3	Fil answer w/certificate of service
2-10-65	#4	Fil interrogatories of pltf., w/cert. of serv.
2-19-65	#5	Fil motion w/affidavit and notice of hearing w/cert. of service
2-23-65	#6	Fil pltf's opposition to def's motion for extension of time to answer answer interrogatories w/affidavit therefor.
3-11-65	#7	Hearing on def.'s motion for extension of time to answer interrogatories Def. allowed until April 15, 1965
3-11-65	#8	Ent and fil order allowing def. until April 15, 1965 to file objections to Interrogatories or to answer the interrogatories. Cy of order mailed to Mr. Chambers and Mr. Barkley.
4-15-65	#9	Fil answers to pltf.'s interrogatories w/cert. of serv.
5- 3-65	#9	Fil notice of taking depositions - Drs. A. Craig Phillips and William L. Anderson
5-26-65	#10	Fil motion for preliminary injunction, together with cert. of serv. one copy handed to U. S. Attorney's office
5-27-65	#11	Fil answer to motion for preliminary injunction, with certificate of service.
6- 1-65	#12	Fil notice, motion to intervene, and Complaint in Intervention, w/ certificate of service
6- 1-65	#13	Fil memorandum of decision and order on motion for preliminary injunction motion for preliminary injunction denied; copies mailed to counsel of record
6- 9-65	#14	Fil answer to motion of the N. C. Teachers Association to intervene or be added as a party plaintiff, w/cert. of serv.
6-21-65	#15	Fil deposition of Dr. A. Craig Phillips
6-25-65	#16	Fil plaintiff's interrogatories, w/cert. of serv. (1 copy handed to USA)
7- 9-65	#17	Fil defendant's answers to interrogatories, with certificate of service.
7-12-65		Case called, issues joined, proceeds to trial w/o intervention of Jury. Pltf's. wit. Dr. Reginald A. Hawkins S & Ex & X-Ex. Pltf's. wit. Louis I. Kramer S & Ex & X-Ex. Pltf. rests. Def's. wit. Richard H. Brown S (not examined)
7-13-65		Case recalled. Proceeds to trial before court w/o intervention of Jury. Pltf's. wit. Dr. A. Craig Phillips recalled & X-Ex completed and Re-Ex & Re-X-Ex and Re-Ex. Def's. wit. Frank Dowd, Jr. S & Ex & X-Ex. Def's Wit. David W. Harris, S & Ex & X-Ex. Pltf's. wit. Mrs. Betsy McClaud Kelly S & Ex. Pltf. submits briefs to Court. Def. makes closing statement & submits briefs. Pltf. makes closing statement. Court adjourned.
7-14-65	#18	Fil memorandum of decision
7-14-65	#19	Ent and fil judgment approving proposed plan of desegregation submitted by Charlotte-Mecklenburg Board of Education except that the resolution with respect to teachers and staff is ORDERED to be amended so as to delete the word "ultimate" and substitute the word "immediate" therefor; and jurisdiction is retained to consider (upon motion of parties) implementation of the plan. Iss JS 1.
7-16-65	#20	Fil defendant's answer to complaint in intervention, with certificate of service.
7-16-65	#21	Fil plaintiffs' notice of appeal, with designation of record on appeal, and certificate of service.

(Cont'd on page 2)

DATE	CLERK'S FEES		ATTACHED IN EXHIBIT PORTFOLIO RETURNING
	PLAINTIFF	DEFENDANT	
7-21-65 #20	Fil plaintiffs' cost bond on appeal		
7-27-65 "	Fil defendant's designation of additional parts of record on appeal, w/cert. of service		
8-20-65	Certifying record on appeal to Clerk, U.S. Court of Appeals for the 4th Circuit; copy letter and of index to Mr. Chitwood and to Mr. Barkley		
11-25-66 #24	Fil plaintiffs' interrogatories, w/cert. of serv.		
11-29-66	Fil mandate and printed copy of opinion, U.S. Court of Appeals for the Fourth Circuit, affirming Judgment of District Court with costs. Record on appeal returned also.		
12- 2-66 #25	Fil objection to interrogatories, with notice of hearing. 3 copies to Asst. DA.		
12-15-66 /26	Fil motion to compel answers to interrogatories w/crt. of svc.		
1- 4-67	Hearing on objections to interrogatories - MW - taken under advisement.		
9- 6-68 #27	Filing motion for further relief, w/cert. of service		
9-10-68 #28	Fil plaintiffs' interrogatories, with cert. of service.		
9=16-68 #29	Fil answer to motion for further relief (by def.), w/cert. of serv.		
9-16-68 #30	Fil motion for extension of time until 11-1-68 to file objections to interrogatories, w/cert. of serv.		
10-4-68 #31	Fil Response to Defendant's Motion for Extension of time - 1 copy to D. A.		
10- 7-68 #32	Entering and filing order (JBM) - defendant to have until 11-1-68 to file answers to interrogatories; defendant required to make objections on or before 10-14-68. CO-Vol. Vol. 4 #9.		
10-31-68 #33	Filing answers to interrogatories propounded by plaintiffs, consisting of pleading, tables and exhibits together w/separate packet containing maps required by interrogatories w/cert. of serv.		
11-13-68 #34	Filing DEFENDANT's Interrogatories, w/cert. of serv.		
11-26-68 #35	Fil order (consent) for extending time for plaintiff to answer defendant's interrogatories to and including the 10th day of January 1968 (JBM)		
1- 9-69 #36	Fil answers of PLAINTIFFS to Interrogatories of DEFENDANT, v/cert. of service		
1-21-69	Hearing on motion by counsel for plaintiffs for adverse examination or deposition of a number of officers and agents of the School Board, and on motion by counsel for defendants for an order requiring more factual answers than filed Jan. 9, 1969.		
1-21-69 #37	Ent & Fil Order (JBM) Court ruled plaintiffs entitled to proceed with discovery suggested and that defendants entitled to answers requested. Deadline for discovery set for March 3, 1969 if possible, with case to be set for hearing during week of Mar. 10, 1969.		
2- 3-69 #38	Fil plaintiffs' interrogatories to defendant. Copy to D.A. Cert. of service attached.		
2-10-69 # 39	Filing Motion of defendant for extension of time to answer plaintiff's interrogatories, w/cert. of serv.		
2-13-69 #40	Filing order (consent) for extension of time for defendant to have up to and including the 2nd day of March, 1969 to file answers to interrogatories submitted and filed Jun. 31, 1969.		

Cont'd on page 4

DATE	PLAINTIFF	DEFENDANT	CLERK'S FEES		AMOUNT REFUNDED IN EXCESS OF SERVICE
			PLAINTIFF	DEFENDANT	
2-26-69	#41	Filing Defendant's Interrogatories to Plaintiff, w/cert. of service.			
3- 3-69	#12	F11 plaintiff's answers to interrogatories, with certificate of service			
3- 3-69	#43	F11 Plaintiff's interrogatories to defendants, with cert. of service.			
3- 4-69	#11	F11 Defendants' Answers to Plaintiff's Interrogatories, w/cert. of service.			
3- 6-69	# 42	F11 Plaintiffs' answers to Defendants' Interrogatories, w/cert. of service.			
3-10-69	#46	F11 depositions of Carroll O. York, Ralph W. Eaton, James Burch, Dorothy Boone, James Clark, Mary Jane Kistler, Dr. William C. Self, William E. Poe, Gertrude Coward, J. B. Davis, Jr., Joseph Frankford, Dr. James Mikkelson, William L. Anderson, Dr. Robert C. Hanes, John W. Phillips, Dr. W. Leslie Bobbitt, Herbert L. Prickett, John W. Harrilson, Ann Hausmann, Henry L. Smith			
3-10-69		Case called - hearing on pltf.'s motion for further relief. Blfr. enters documentary evidence. P-wit. Chas L. Green s, ex and x-ex. Plaintiff's motion for x-ex. Cert. of service testimony to this witness denied. Plaintiff denied. P-wit. Paul R. Lechner s, ex #73 x-ex. Defender - Plaintiff denied. P-wit. Paul R. Lechner s, ex #73 x-ex. 2-wit.			
3-11-69		JBM - Jack L. Larson s and ex.			
3-11-69		Case re-called - Dr. Jack L. Larson ex and x-cx. P-wit. John A. Finger, Jr., s, ex and x-ex.; P-wit. Robert A. Passy s and cx.			
3-12-69		Case re-called - P-wit. Robert A. Passy ex and x-ex. Pltfs. rest. D-wit. James Thomas Burch s, ex and x-ex. D-wit. William C. Self s, cx and x-ex.			
3-13-69		Case re-called - D-wit. Wm. C. Self ex and x-ex; P-wit. Ralph W. Eaton s, ex and x-ex.; D-wit. Robert C. Hanes s, ex and x-ex.; D-wit. John W. Phillips s, ex and x-ex. Further testimony for pltfs. to be taken 3-17-69. Record remains open for any further evidence either party might want to introduce. Parties to submit briefs, etc. by 3-24-69			
3-17-69		Case re-called - P-wit. Yale Rabin s, ex and x-ex. Record left open until further notice. Pltfs. to submit findings of fact, etc., by March 24 and defendants to have five days thereafter.			
3-26-69		Case re-called. D-wit. Wm. McIntyre s, ex and x-ex.			
4-23-69	#47	F11 Petition for Extension of Time to File Plan of Desegregation w/cert. of service active and complete desegregation of teachers, to be effective with 1969-70 school year; defendant to submit by May 15, 1969, a plan and time table for active desegregation of pupils, to be predominantly effective in fall of 1969 and completed by Fall of 1970; Board is to use all of its own resources and any or all of numerous methods; plan should be for effective operation of schools in a desegregated atmosphere. CO. VOL. IV, #180 Copies to counsel.			
5- 1-69	#48	F11 Court Reporter's transcript, two volumes			
5-14-69	#49	F11 Petition for Extension of Time to File Plan of Desegregation w/cert. of service allowing extension of time extended to and including: Ent & Pl Order (JBM) allowing extension of time extended to and including: CO VOL. IV, #191.			
5-14-69	#49a	Copies to counsel. CO VOL. IV, #191.			
5-15-69	#50	F11 Motion for Temporary Restraining Order restraining the def. from initiating or continuing construction of new schools or new facilities at any existing schools without specific prior approval of court. Cert. of service attached.			
5-28-69	#51	F11 Plan for Desegregation of Schools w/certificates of service. May 29, 1969. Report. In connection with Submission of Plan of Desegregation (certificate of service with plan over this document also).			
5-28-69	#52	F11 Defendant's response to Motion for Temporary Restraining Order, w/cert. of service			
5- 29-69	#53	F11 Defendant's response to Motion for Temporary Restraining Order, w/cert. of service			
6-4-69	#54	F11 Order (JBM) ordering members of Charlotte Mecklenburg Board of Education Ent & Pl Order (JBM) ordering members of Charlotte Mecklenburg Board of Education to this action. CO. VOL. IV, #210.			

DATE	#	FILING-PROCEEDINGS	CLERK'S FEES		AMOUNT PAID IN ADVANCE	
			PLAINTIFF	DEFENDANT		
6- 9-69 6-10-69	#57	<p>6-11-69 #58</p> <p>6-12-69 #59</p> <p>6-13-69 6-13-69</p> <p>6-16-69 #62</p> <p>6-16-69 #63</p> <p>6-18-69 #64</p> <p>6-16-69</p> <p>6-17-69</p> <p>6-18-69</p> <p>6-20-69 #65</p>	<p>2. File Motion (JEM) CO VOL. IV, #21.</p> <p>3. Request Pursuant to Order of Court dated 6-9 Requesting Judge w/ respect to production of existing records; w/cert. or serv.</p> <p>File Marshal's return on Nos. 5, 6 and 55 - served on Members William E. Poe; Dan Hood; Ben Mauldin; Coleman Kelly; Julia Hanes; Sam S. McNinch III; Betsy Kelly - June 5, 1969.</p> <p>Fil Motion to set aside order joining additional parties defendant, w/cert. of service.</p> <p>Fil Plaintiffs' response to Defendants' Plan for Desegregation of schools and Motion for Civil Contempt, w/cert. of serv.</p> <p>Fil Motion to set aside or drop William E. Poe as a defendant.</p> <p>Fil Marshal's return - served on Board Member Henderson Belk, 5-11-69 P.M. on June 12, 1969.</p> <p>Fil Response of Defendant William E. Poe to Motion of Plaintiffs, w/cert. of serv.</p> <p>Fil Response to Defendants' Motions to Strike Additional Parties Defendant, w/cert. of serv.</p> <p>Fil Marshal's Return served on Dr. Carlton G. Watkins, at 1630 Mockingbird Lane, Charlotte, N. C., at 11:15 A.M., June 13, 1969.</p> <p>Case called (JEM). Motion of individual members of Board of Education to set aside order joining additional defendants denied. Hearing on Plan for Desegregation submitted by Board of Education held. P-wit. Dan Hood s and ex and x-ex.; P-wit. Ben F. Huntley s, ex and x-ex.; P-wit. Rev. Coleman W. Kelly, J.H., s and ex. Case re-called - P-wit. Rev. Coleman W. Kelly examined and x-ex.; P-wit. Sam S. McNinch III s, ex and x-ex.; P-wit. Wm. E. Poe, s, ex and x-ex.; P-wit. Julia Mauldin s, ex and x-ex.; P-wit. Mrs. Betsy Kelly s, ex and x-ex.; P-wit. Mary Hazel Hatchett s and ex. Case re-called - proceeds to trial. P-wit. John Finger s, ex and x-ex.; P-wit. Henderson Belk s, ex and x-ex.; P-wit. Carlton C. Watkins s, ex and x-ex.; P-wit. Jo G. Foster s, ex. Ptf. rests. Def. wit. Dr. Robert C. Hanes s and ex; D-wit. Dr. William Self s, ex and x-ex. Dr. Robert C. Hanes re-called and x-ex. by Mrs. Betsy Kelly.; Dr. Watkins re-called by Mrs. Kelly and examined; D-wit. Wm. E. Poe re-called and examined. Defendants rest. Matter taken under advisement.</p> <p>Ent & Fil Opinion and Order (JEM) CO VOL. IV, #220.</p> <p>(Copies mailed to Mr. Barkley and Mr. Waggoner. Copies picked up by Julius Chambers office).</p> <p>8 copies sent to Mr. Burkley for school board members.</p> <p>(1) Motion of individual defendants to dismiss denied;</p> <p>(2) No citations for contempt are made;</p> <p>(3) Decision on faculty assignment plan deferred pending report on progress on or before Aug. 4, 1969;</p> <p>(4) Penalty on transferring high school athletes disapproved;</p> <p>(5) Transportation provision for transferring students approved;</p> <p>(6) Directed to halt action on Metropolitan High School until adequate proof of desegregation of school;</p> <p>(7) Motion restrained on construction of other building projects;</p> <p>(8) Defendants ordered to proceed to prepare and submit a positive plan for desegregation - Plan to be submitted by August 4, 1969.</p>			

(Contd on page 6)

DATE	FILINGS-PROCEEDINGS	CLERK'S FEES		AMOUNT PAID/ENTERED IN REMOVAL RETURNED
		PLAINTIFF	DEFENDANT	
6-16-69 #66	F11 Defendant's answer to Questions posed by the Court in its order dated 6-4-69			
6-16-69 #67	Fil Defendant's answer to response and motion of plaintiffs pertaining to plan for school desegregation			
6-24-69 #68	Fil supplemental findings of Court in connection with the order of June 20, 1969. Copies to counsel and to each member of the School Board. (CO V4 #220)			
7-15-69 #69	Fil Vol. I or Court Reporter's Transcript - June 16, 1969 hearing Ent & F11 Motion for Leave to File Supplemental Complaint; to Add Additional Defendants and for Temporary Restraining Order, v/affidavit of Reginald A. Hawkins, v/cert. of service			
7-22-69 #70	Fil Memorandum of Law in Support of Plaintiffs' Motion for leave to file a supplemental complaint, add parties-defendant and for temporary restraining order.			
7-22-69 #71	Fil Vol. II of Court Reporter's Transcript - June 16, 1969 hearing Ent & F11 Order (JBM) allowing plaintiffs' motion for leave to file a supplemental complaint; US Marshal directed to serve same upon defendants. CO VOL. V, #5. Copies to counsel.			
7-22-69 #72	Fil Supplemental Complaint v/ certificate of service - contains request for 3-judge Mailed copies of #70, #71, #73 and #74 to School Board members (9) by mailing to Mr. Brock Barkley for distribution.			
7-22-69 #73	Mailing to US Marshal, Asheville, N. C., summon and true copies of summons, true copies of supplemental complaints plus true copies of #70, #71 and #73 for service on Dr. A. Craig Phillips, Superintendent of Public Instruction, Raleigh, N. C., and Dr. A. Craig Phillips, State Board of Education, Raleigh, N. C.			
7-23-69 #74	Fil amendment to plan for further desegregation of schools, with certificate of service.			
7-29-69 #75	Fil report in connection with amendment to plan for further desegregation by Counsel for Charlotte-Mecklenburg Board of Education and Case fatigued for hearing on Plaintiff's Motion for Reassignment of Wm. Self & ex. Rev. Leah & Paul Phillips/Nationalist's Petition served 7-29-69 on Dr. Craig Phillips, Secretary of State Board of Public Instruction and on Dr. Craig Phillips, Secretary of State of Education.			
8-4-69 #76	Fil Answer of the Defendants, the North Carolina State Board of Education and Superintendent of Public Instruction of the State of N. C., to the Supplemental Complaint, v/cert. of serv.			
8-5-69 #77	Fil Motion with Notice of Motion to Intervene as a Plaintiff in a Class Action, with certificate of service			
8-7-69 #78	Fil Complaint of Intervening Plaintiffs - Paw Creek School District			
8-11-69 #79	Fil Plaintiff's response to motion to intervene, with certificate of service. Handing to Judge McMillan with letter, and chart.			
8-12-69 #79 a	Fil Motion with Notice of Motion to Intervene as a Plaintiff in a Class Action, with certificate of service			
8-15-69 #80	Fil petition to file another plan(presented by Thomas Ray) by a group of citizens.			
8-15-69 #81	Ent & F11 Order (JBM) that 1) policy statement of Board approved; 2) faculty desegregation program approved; 3) closing of 7 all-black schools approved reluctantly for a one-year, temporary arrangement; 4) plan to reassign 1,245 students from overcrowded black schools approved; 5) reassignment of Paw Creek students to Woodland approved; 6) proposals of Board for restructuring of attendance lines, etc. approved as presented; 7) Board is further directed to plan for complete faculty desegregation for 1970-71 as well as complete desegregation of students to the maximum extent possible and present a detailed report showing, complete with figures and maps, location and nature of each construction project proposed, etc; 8) Board ordered not to divest itself of land, etc. in Second Ward area; 9) jurisdiction retained. CO VOL. V, #22 Copies mailed to counsel and School Board members . New plan to be submitted by November 17, 1969.			

DATE	PROCEEDINGS
8-29-69	Fil defns' motion for order authorizing and approving proposed amendment to use IRWIN AVE instead of WEB VANCE Elementary Ent and #51 order allowing ent. motion to amend plan to use IRWIN AVE.
8-29-69	#54
9- 2-69	#85
9- 4-69	#86
9-11-69	#87
9-12-69	#88
9-16-69	#89
10- 2-69	#90
10- 8-69	#91
10-10-69	#92
11- 3-69	#94
11- 5-69	#95
11-10-69	#96
11-17-69	#97
11-18-69	#98
11-19-69	#99
11-21-69	#100
12- 1-69	#101

Fil defns' motion for order authorizing and approving proposed amendment to use IRWIN AVE instead of WEB VANCE Elementary Ent and #51 order allowing ent. motion to amend plan to use IRWIN AVE. Junior High instead of WEB VANCE ELEMENTARY; disapproving proposal to provide transportation for any students attending IRWIN AVE. Copy mailed to counsel of record. Ten copies mailed to Waggoner for School Board Members

Fil Pltfs.' motion for further relief and for show cause, w/cert. of serv. Fil Court Reporter's Transcript (orig.) or proceedings of 8-5-69 Ent and fil order releasing certain plaintiffs' exhibits to plaintiffs' counsel for period of 30 days - JBM. CO-Vol. V-#82

Fil defns' response to motion for further relief, w/cert of serv. Ent and fil order (JBM) allowing Board of Education to surrender premises formerly occupied by GLIDDEN PAINT CO-Vol. V-92. Copies to counsel

Fil defns' motion for extension of time to file desegregation plan w/cert. of serv.

Fil Pltfs' response to motion of defns. for extension of time, w/cert. of serv.

Ent and fil order (JBM) - Board directed to file w/Court by 10-29-69 answers to numerous questions re results to date of efforts, as well as details of instructions to Mr. Well, mission, goals, etc. Action deferred on motion for extension of time, as well as pltfs' motion which requests abolition of freedom of choice and appointment of outside expert to devise plan in default of Board Action. CO-Vol. IV-#123. Ten copies mailed Waggoner for counsel and school board members; copies mailed Chambers and Barkley, and two copies mailed VANORE

Fil defendants' Report to Court Pursuant to Order of 10-10-69 w/cert. of serv.

Fil plaintiffs' further response to defendants' motion for extension and motion for further relief, w/cert. of serv.

Fil defendants' reply to plaintiffs' further response to defendants' motion for extension of time and plaintiffs' motion for further relief, w/cert. of serv.

Fil order (JBM) - motion of defendants for extension of time denied. CO-Vol. V-#136 - also filing Memorandum Opinion

Fil defendants' Amendment to Plan for Further Desegregation of Schools, and Report submitted in connection with 11-13-69 amendment to plan for further desegregation

Fil order (JBM) directing pltfs to file by 11-21-69 objections or comments to amendment to plan of defendants. CO-Vol. V-#143. Copies mailed counsel

Fil certificate of service for amendment to plan for further desegregation and report in connection therewith.

Fil pltfs. response to defns. amendment to plan for further desegregation of schools, w/cert. of serv.

Ent and fil Opinion and order (JBM) that November 17 plan is disapproved; defns. directed to desegregate faculties in all schools effective not later than Sept. 1, 1970, so ratio of black teachers to white teachers in each will be approximately same as ratio of black teachers to white teachers in entire school; consultant will be designated by court; defs. directed to cooperate w/consultant, providing space, pay fees and expenses, etc.; pltfs. motion for order directing immediate desegregation of entire

(Cont'd on page 8)

DATE	PROCEEDINGS
	(Cont'd from page 7)
12- 2-69 #102	school system deferrred; further orders re restraining construction and enlargement of schools deferred; motion for citation of school board members / exempt of court deferred. CO-Vol. V-#150
1- 20-70 #103	Ent and fil. Lawyer (JBM) appointing DR. JOHN A. FINGER, JR., consultant.
1- 20-70 #104	Fil motion for immediate desegregation of public school, w/cert. of service
2- 2-70 #105	Ent and fil order (JBM) directing Clerk to set case for immediate hearing
2- 2-70	Fil defendants' plan for desegregation
	Hearing - JBM - on plaintiffs' motion for immediate desegregation. Motion taken under advisement. School Board Plan and Statement of Coleman Kerry presented to Court. Dr. Wm. C. Self's and questioned by Court. Court will discuss w/counsel need for further testimony on school plans - hearing left open
2- 4-70 #106	Fil defendants' motion for hearing on plans for desegregation of schools, w/cert. of serv.
2- 5-70	Hearing - JBM - (further hearing) - on plans for desegregation. D-wit. Wm. C. Self's, ex and x-ex.; D-wit. J. D. Morgan's, ex and x-ex.; D-wit. D. J. Dark's and ex.
	Ent and fil order (JBM) setting out guidelines for desegregation of schools. Jurisdiction retained. CO-Vol. VI-#59.
2-12-70 #108	Fil Report of the School Board to Judge McMillan, dated this day.
2-13-70 #109	Fil motion to add additional parties defendant and for further relief w/certificate of service
2-13-70 #110	Fil points of authorities in support of above motion, w/certificate of service
2-18-70 #111	Fil reporter's transcript of proceedings February 2, 1970 and Feb. 5, 1970
2-19-70 #112	Fil Report of the School Board to Judge McMillan, dated this day.
2-20-70 #113	Fil Notification and Request for Designation of Three-Judge Court
2-24-70 #114	Fil DESIGNATION OF THREE-JUDGE COURT - designation of Judges Craven and Butzner, Circuit Judges, and Judge James B. McMillan, District Judge
2-24-70 #115	Fil certificate of mailing - notification and request for designation of three-judge court and designation of three-judge court
2-24-70 #116	Fil Tender of Evidence Nunc Pro Tunc and Objections by Defendants, together with Affidavits of Dr. William C. Self, J. D. Morgan, Louis W. Alexander, Herman J. House and Robert L. Deaton and tender of evidence contained in Report of Court Consultant delivered to Court but not introduced into evidence, w/cert. of serv.
2-25-70 #117	Fil notice of appeal of Charlotte-Mecklenburg Board of Education, Wm. E. Poe, Henderson Belk, Dan Hood, Ben F. Huntley, Betsey Kelly, Sam McNinch, III and Carlton G. Watkins to Fourth Circuit Court of Appeals from the following orders: 1. Opinion and Order dated 4/23/69; 2. Two Orders dated 6/4/69; 3. Opinion and Order dated 6/20/69; 4. Order dated 8/15/69; 5. Order dated 8/29/69; 6. Order dated 10/10/69; 7. Order dated 11/7/69; 8. Order dated 12/1/69 and opinion; 9. Order dated 12/2/69; and 10. Order dated 2/5/70, - together w/findings of fact and conclusions of law in support of foregoing orders. Copies of notice to J. LeVonne Chambers, Ralph Moody, and Andrew A. Vanore, Jr.
2-25-70 #118	Fil appeal bond, cash bond in amount of \$250.00 - R#47334

(Cont'd on page 9)

D. C. NOA Rev. Civil Inter Part Contingent

DATE		PROCEEDINGS
2-25-70	#111	Fil notice of three-judge court to consider current matters before J. judges Craven, Butzner and McMillan, at US District Court, Charlotte, N. C., at 10 A.M., Tuesday, March 10, 1970. Copies mailed - certified, return receipt requested - to additional parties, defendant. Copies mailed to other counsel by regular mail.
2-25-70	#120	Ent & Fil Order (JBM) additional party defendants made parties - Hon. Robert W. Scott, Hon. A. C. Davis, Hon. W. K. McLean, Tom B. Harris, G. Don Roberson, A. Breece Breland, James M. Postell, W. E. Roric, Jr., Chalmers R. Carr, R. T. Wilson, Concerned Parents Association, James H. Carson, Jr., and W. H. Boo. Plts. directed to prepare and file on or before Monday, March 2, 1970, proposed findings of fact and conclusions of law and a proposed order, and brief in support of their position. Other parties directed to prepare and file on or before Friday, March 6, 1970, proposed findings of fact and conclusions of law and a proposed order, and brief in support of their position. CO VOL. VI, #91
2-26-70	#121	Fil answer of Defs. N. C. STATE BOARD OF EDUCATION, Dr. A. Craig Phillips, Superintendent of Public Instruction, Robert H. Scott, Governor of the State of North Carolina, A. C. Davis, Controller of the State Department of Public Instruction, and William K. McLean, Judge of the Superior Court of Mecklenburg County to Motion to Add Additional Parties Defendant and for Further Relief, w/certificate of service.
2-26-70	#122	Fil report to Judge McMillan by Supt. Self of Charlotte-Mecklenburg Schools
2-27-70	#123	Fil Plaintiffs' motion to add additional parties defendant and for further relief
2-27-70	#124	Fil motion of plaintiffs for temporary restraining order and for contempt, with certificate of service
2-27-70	#125	Fil plaintiffs' request for admission, to be served on pltrs.' attorneys within ten (10) days - w/cert. of service
3- 2-70	#126	Fil 1 copy of application for stay, w/accompanying papers, directed to Judge J. Braxton Craven, Jr., Circuit Judge
3- 2-70	#127	Fil motion for hearing on Superior Court Order in Civil 2631
3-2-70	#128	Fil Deposition of J. D. Morgan
3-2-70	#129	Fil Deposition of William C. Self
3-2-70	#130	Fil Deposition of D. J. Dark
3-2-70	#131	Fil Deposition of F. D. McMillan, Jr.
3- 2-70	#132	Fil motion to dismiss and vacate order (making Concerned Parents Assn. additional defendant) by their counsel, Wm. H. Booe, w/cert. of service
3- 2-70	#133	Fil motion to dismiss and vacate order (making Harris, Roberson et al. additional parties defendant), w/cert. of service
3- 2-70	#134	Fil motion for continuance, w/cert. of service.
3- 3-70	#135	Fil Plaintiffs' proposed findings of fact, conclusions of law and order, together w/brief and cert. of serv.
3- 2-70	#136	Fil Defendants' Application for Order
3- 2-70	#137	Fil Plaintiffs' Brief in Support of their Motion for a Temporary Restraining Order and for Contempt
3- 3-70	#138	Fil Motion of Defendants, State Officials, for Continuance, together with Notice of Motion
3- 3-70	#139	Ent and fil order continuing three-judge hearing to 10:00 AM on Tuesday, March 24, 1970. Copies mailed all counsel of record. CO-Vol. VI-#98

(Cont'd on page 10)

PROCEEDINGS

Docket
Journals

DATE		PROCEEDINGS
3- 3-70	#11	F11 Ent and fil Amendment, correction or clarification of order of February 5, 1970. Copies mailed to all counsel of record. CO VOL. VI, #102
3- 4-70	=11	F11 Plaintiffs' List of Additional Exhibits and Proposed Evidence w/cert. of service.
3- 5-70	#112	F11 Defendants' answers and objections to plaintiffs' Request for Admission, w/cert. of serv.
3- 5-70	#143	F11 Motion of Robert Morgan, Attorney General of N. C. requesting that the Honorable James B. McMillan disqualify and remove himself from the panel assigned to hear this case; w/certificate of service.
3- 5-70	#144	F11 School Board's Report to Judge McMillan for the week ending March 5, 1970
3- 6-70	#145	F11 Objections to Plaintiffs' List of Additional Exhibits and Proposed Evidence
3- 6-70	#146	F11 Motion of William H. Booé, et al., to Recuse and Disqualify
3- 6-70	#147	F11 motion for relief from conflicting orders from the courts , w/certificate of service
3- 6-70	#148	Ent & Fil Order (JBM) motion filed by Atty. Gen. requesting Judge James B. McMillan to disqualify himself from three-judge panel denied . CO VOL. VI, # 101
3- 6-70	#149	Ent & Fil Order (JBM) motion to recuse and disqualify by William H. Booé, disallowed. CO VOL. VI, # 102
3- 6-70	#150	Ent & Fil Order (JBM) objections of defendants to requests for admissions submitted by plaintiffs overruled, and defendants directed to answer all requests for admissions, under oath, in full, not later than Fri., March 13, 1970. CO VOL. VI, #103
3- 6-70	#151	Ent & Fil Order (JBM) order heretofore signed by Judge Snepp in Civil Action #2631 in Superior Court of Meck. County hereby suspended and held in abeyance and of no force and effect pending the final determination by a three-judge court or by the Supreme Court of the issues which will be presented to the three-judge court; and, that the Moore Case, No. 2631, be referred to the three-judge court on March 24, 1970, for such hearing and determination as that court may find proper. CO VOL. VI, # 104
3- 6-70	#152	Ent & Fil Order (JBM) court directed to prepare and file with Clerk of this court not later than Fri., March 13, 1970, all evidence they would like the court to consider hearing upon factual questions referred to in March 5, 1970 order of Court of Appeals; counsel for all parties directed to produce upon written request of opposing counsel all documents, etc. requested by opposing counsel; counsel directed to appear before the court at 2 P.M., Monday, March 16, 1970 for purpose of examining such evidence as may then be available, etc.; if further hearing is necessary after conference among court and counsel scheduled for March 16, 1970, it will be conducted on Tuesday, March 17, 1970, at 10 A.M. CO VOL. VI, # 105
3- 6-70	#153	Ent & Fil Order (JBM) parties directed to procure and supply the court by March 13, 1970, with information and statistics. CO VOL. VI, #106
3- 9-70	#154	F11 motion to The Honorable, The Chief Judge of the United States Court of Appeals For The Fourth Circuit by Attorney Gen. of N. C., Robert Morgan, requesting that The Honorable James B. McMillan be disqualified and removed from the panel of the three-judge court.
3- 9-70	#155	Ent & Fil Order (Chief Judge, Fourth Circuit of Appeals, Clement F. Haynsworth, Jr.) denying motion that Judge McMillan be disqualified and removed from panel of three-judge court. CO VOL. VI, # 109
3- 9-70	#156	F11 notice of deposition - depositions of James H. Carson and Dr. John A. Finger and J. D. Morgan to be taken by plaintiffs on March 11, 1970 , w/ certificate of service.

(continued)

DATE	PROCEEDINGS	Judge/Court
3-11-70	#157	Fil motion to quash subpoena for taking deposition of J. D. Morgan, w/certificate of service
3-11-70	#158	Fil plaintiffs' response to defendants' motion to quash subpoena, w/certificate of service
3-11-70		Hearing - WN - on defendants' motion to quash subpoena for taking deposition of J. D. Morgan - Court ruled deposition should be taken at 5:00 P. M., 3-11-70.
3-12-70	#159	Fil stipulation - by plts. and State Supt of Public Instruction and State Board of Education - re enrollment in public schools of N. C.
3-12-70	#160	Fil Report of School Board to Judge McMillan
3-13-70	#161	Fil Brief in behalf of Robert W. Scott, Governor of North Carolina; State Board of Education; State Superintendent of Public Instruction; A. C. Davis, Controller; William K. McLean, Judge of the Superior Court, and James H. Carson, Jr., Member of the North Carolina General Assembly. Copies mailed to Judges Craven and Butzner. Fil Submissions to Court in Response to March 6, 1970 Order and Motion for Extension of time, including Maps requested by Court Order of March 6, by def. Affidavit of Herman J. Hoose, Director of Traffic Engineering for city of Charlotte att., w/cert. of service.
		Fil Def's Response to pltf's Request for Admissions; w/cert. of service.
		Fil Motion for Public Hearing; or Presence of Court Reporter at Conference. w/certificate of service.
3-13-70	#163	Fil Adoption of Attorney General's Brief on Behalf of the Defendant Board of Education and the Individual Board Members. w/cert. of service
3-13-70	#164	Fil Findings of Fact and Conclusions of Law submitted by Robert Morran, Attorney General. Copies to Judges of Three-Judge Court.
3-16-70	#165	Fil Deposition of J. D. Morran.
3-16-70	#166	Fil Deposition of James H. Carson, Jr.
3-16-70	#167	Fil Deposition of John A. Flincher.
3-16-70	#168	Fil plaintiffs' submission of additional data pursuant to order of the court of March 6, 1970 (plus exhibits), w/certificate of service
3-16-70	#169	Fil submissions to Court on behalf of defendants (affidavits of John W. Harrison, J. D. Morgan, John W. Harrison Sr., and letter from Chas. M. Lowe to Wm. E. Poe - all dated March 16, 1970)
3-16-70	#170	Fil defendants' submissions pursuant to orders of March 6, 1970, cert. Fil submissions to Court in response to March 6, 1970, order (data), w/certificate of service.
3-17-70	#171	Fil Transcript of Proceedings of March 16, 17, 1970.
3-17-70	#172	Ent and Fil Order (JFM) for deposition of Mr. J. D. Morran, and allowing Exhibit 30 to be filed with Clerk, and that all parties be accorded opportunity to examine same. Copies to Counsel of record. (O Vol. #V-113
3-17-70	#173	Fil Report to Judge McMillan of William C. Self, Superintendent of Schools. James M. Postell, William E. Rorie, Jr., Chalmers R. Carr, Robert T. Wilson, and William H. Rose. w/certificate of service.
3-18-70	#174	Fil COPY of Renewal of application for stay of portion of court order of February 5, 1970 as amended by order of March 3, 1970
3-18-70	#175	Fil copy of Judge McMillan's supplementary findings of fact and supplemental memorandum submitted to U.S.Court of Appeals, Richmond, dated 3/21/70
3-19-70	#176	
3-19-70	#177	
3-19-70	#178	
3-20-70	#179	
3-23-70	#180	
3-23-70	#181 ^a	

THE UNITED STATES IN THE NINETIES

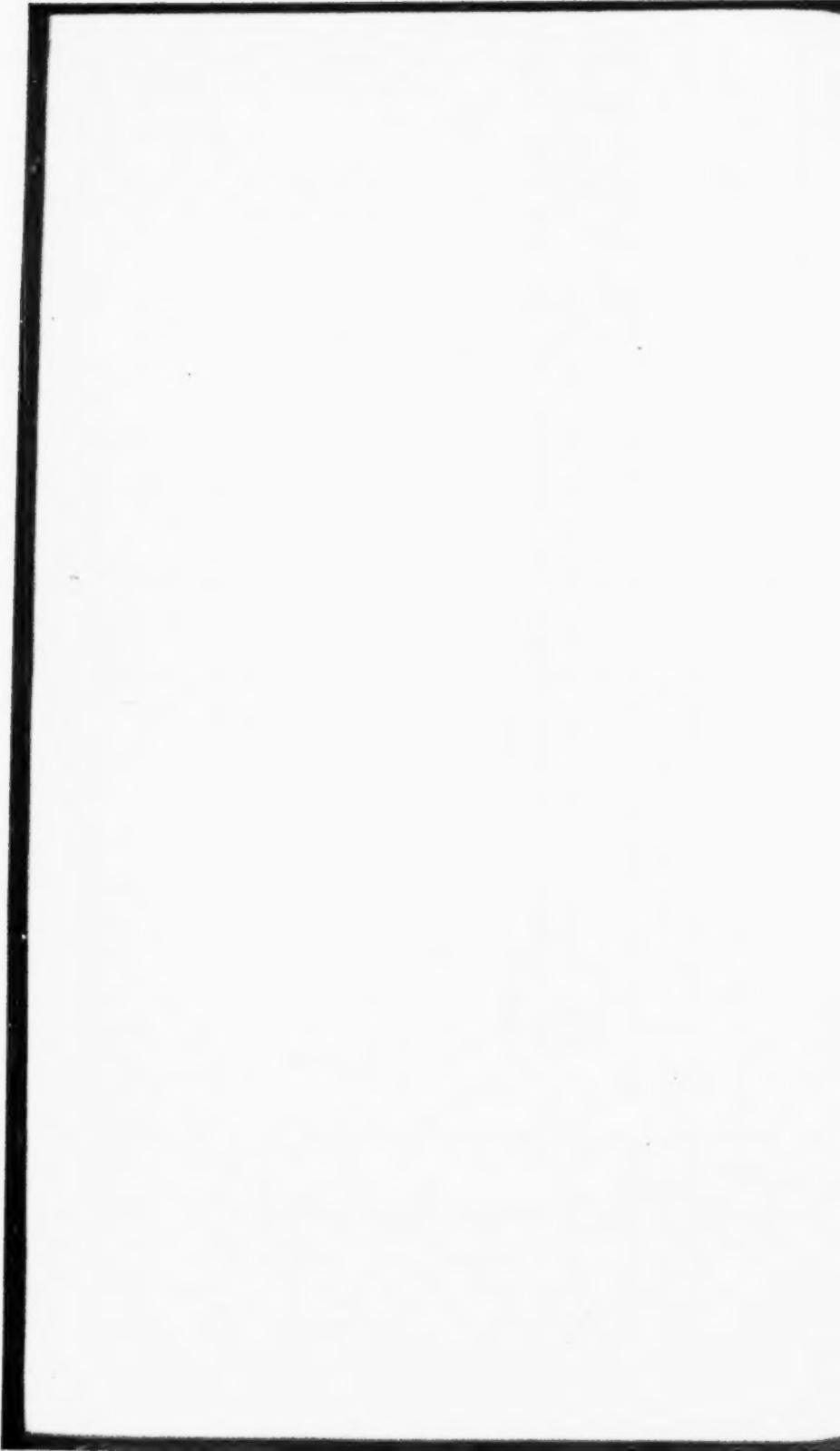
3-23-70	#183	Fil Defendants' Response to Plaintiff's Supplemental Exhibit of March 26, 1970, with certificate of service.
3-24-70	#184	Fil Plaintiff's memorandum or Additional Points of Authority. w/cert. of service.
3-25-70	#185	Ent and fil order noting exceptions to order by Court on 3-6-70 following motion to recuse and disqualify filed by Wm. H. Booé and others. CO-Vol. VI-#122.
3-25-70	#186	Ent and fil order staying time table for implementation of this court's order of 2-5-70 until September 1, 1970. CO-Vol. VI-#123. JEW.
		Copies mailed to counsel of record.
3-26-70	#187	Fil by Defendants Charlotte-Mecklenburg Board of Education and individual members, objections and exceptions to Supplementary Findings of Fact of March 21, 1970, and motion for modification and clarification thereof.
3-31-70	#188	Fil Notice of Appeal by plaintiff. Copies mailed to counsel of record.
3-30-70	#189	Fil Plaintiff's "General Brief in the sum of \$250.00 - Unit of States Fidelity and Surety Company, Inc.".
4- 2-70	#90	Fil Marshal's return of service of summons, complaint and exhibits for plaintiffs on additional defendants, executed by serving Whiteford S. Blakney (individually and as attorney) and William H. Booé (individually and as attorney), representing Mrs. Robert Lee Moore et al., additional parties-defendant - on March 23, 1970
4- 2-70	#91	Fil Deposition of J. D. Morgan, taken 3/19/70 - 98 pages Certifying record to Clerk, USCA, Richmond
4- 6-70	#191	Fil Further Findings of Fact on matters raised by March 26, 1970, Motions of Defendants (original filed by Court with Clerk, USCA)
4-29-70n	#192	Fil Opinion - Three Judge Court - Copies to counsel.
6- 9-70	#193	Fil copy of order USCA - Judge Craven's order of disqualification and memorandum of decision
6-22-70	#194	Ent & Fil Final Judgment (JBC-JDB-JBM) - N. C. General Statute 115-176.1 prohibiting assignment by race and bussing be and is hereby held unconstitutional; pltfs. motion to hold defendants in contempt denied; various motions to dismiss are denied. CO VOL. VI, #208 - Copies to counsel.
6-30-70	#195	Fil Submission Pursuant to Order of Court of Appeals for the Fourth Circuit w/certificate of service and exhibits A (HEW's plan for the establishment of a unitary system for the Charlotte-Mecklenburg School District; exhibit B (Statement of Board Minority Members); and, exhibit C (Resolution).
7- 2-70	#196	Fil Notice of Appeal to Supreme Court of United States by Defs. Scott, Davis, McLean, N. C. State Board of Education and Phillips. Copy mailed to counsel for all parties.
7- 7-70	#197	Fil Plaintiffs' Response to the Defendants' Submission to Order of the Court of Appeals for the Fourth Circuit. w/cert. of service
7-13-70	#198	Fil deposition of John P. Cross, July 8, 1970
7-13-70	#199	Fil deposition of Henry L. Kemp, July 8, 1970
7-14-70	#200	Fil deposition of Dr. Carlton G. Watkins - July 8, 1970
7-14-70	#201	Fil deposition of William E. Poe - July 10, 1970
7-14-70	#202	Fil motion for leave to participate as amicus curiae
7-14-70	#203	Ent & Fil Order (JBM) granting leave for the United States to appear and participate in the July 15, 1970 hearing respecting the HEW plan. CO. VOL. #217 Copies mailed to counsel

Continued on Page 13



D. C. 110A Rev. Civil Docket Continuation

DATE	PROCEEDINGS
7-15-70	#204 FIL deposition of J. D. Morgan.
7-15-70	#205 FIL deposition of Dr. William C. Self.
7-17-70	#206 FIL objection and exception to certain portions of final judgment of 3-judge court by additional parties-defendant, signed by Judge McMillion; also object to the signing and entry of the judgment. Copies to Mr. Waggoner, Hon. Robt. Morgan, Mr. Chambers, and Mr. Booé (who submitted paper). (CO V7 #8)



Docket Entries

Motion for Further Relief

(Filed September 6, 1968)

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

CIVIL ACTION No. 1974

JAMES E. SWANN, *et al.*,*Plaintiffs,*

and

THE NORTH CAROLINA TEACHERS ASSOCIATION, a corporation,

Plaintiff-Intervenor,

—vs.—THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION,
a public corporate,*Defendant.*

The plaintiffs and plaintiff-intervenor, by their undersigned counsel, respectfully move the Court for further relief in the above-styled cause, and, as grounds therefor, show the Court as follows:

1. This cause was initially filed by plaintiffs on January 15, 1968, seeking injunctive relief against the racially discriminatory practices and policies of the defendant in the operation of the Charlotte-Mecklenburg Public Schools.

Motion for Further Relief

Plaintiffs challenged at that time (a) the attendance zones of the various schools which limited or restricted desegregation; (b) the exception by the School Board of 10 Negro schools from attendance zoning; (c) the use of freedom of choice imposed on attendance zoning, permitting students assigned to integrated schools to transfer out, thus resegregating the schools and (d) the failure of the board to take immediate and effective steps to desegregate teachers and staff personnel.

2. Following the hearing of this cause in July, 1965, the District Court entered an order dated July 14, 1965 approving of the plan adopted by the school board providing for attendance zones for 99 of the 109 schools, exception of the 10 Negro schools from geographic attendance plan, transfer of pupils from integrated schools to segregated after initial assignments, and modification of the plan with respect to teachers, requiring immediate integration of teachers. The United States Court of Appeals for the Fourth Circuit affirmed the District Court order on December 24, 1966, reasoning that the 10 excepted Negro schools had been closed, that there was no affirmative duty on the school board to act consciously for the purpose of achieving the maximum mixture of races in the schools, and holding further that any party may apply to the District Court for further relief or for modification of the District Court order, the United States Supreme Court decided *Greene v. County School Board of New Kent County*, — U.S. —, 20 L.ed.2d. 727; *Monroe v. Board of Commissioners of the City of Jackson*, — U.S. —, 20 L.ed. 2d 733, and *Raney v. Board of Education of Gould School District*, — U.S. —, 20 L.ed. 2d 727, and the United States Court of Appeals for the Fourth Circuit decided *Brewer v. School*

Motion for Further Relief

Board of the City of Norfolk, — F.2d — (Fourth Cir. #11782, May 31, 1968). It is clear from these decisions that the further modification of the District Court order of July 14, 1965, is warranted.

3. Since the District Court order of July 14, 1965, the school board has closed the 10 Negro schools, excepted from the geographic attendance program of 1965 and has established new boundary lines for the schools. In addition, the school board has constructed and made additions to several new schools. The new boundary lines established and the placement of the new schools and additions to existing schools were designed and have had the effect of perpetuating segregation in the school system. The defendant has also continued the free transfer provisions allowing students to transfer out of integrated schools and has failed to take appropriate steps to completely desegregate staff and school personnel.

4. Specifically:

(A) Defendant has perpetuated attendance area school districting in such manner as to maintain and perpetuate segregated schools. The all-white, all-Negro and tokenly integrated schools in this system result from racially gerrymandered school districts, the use of attendance areas based on racially segregated and developed housing, both publicly and privately contrived, the use of a feeder system which perpetuates the racially segregated system as existed before *Brown v. Board of Education*. This practice has been condemned both by the Supreme Court and by the United States Court of Appeals for the Fourth Circuit. Alternative methods exist here for complete disestablishment of the segregated system, and, under the decision cited

Motion for Further Relief

above, the school board is required to pursue these alternative methods.

(B) Defendants use of the freedom of choice or free transfer plan is clearly for the purpose of perpetuating segregated schools. The use of freedom of choice in this system, imposed on geographic attendance zones where the results have been to perpetuate segregated schools, has been condemned by the Supreme Court and the United States Court of Appeals for the Fourth Circuit. Under the decisions cited above the school board is constitutionally required to eliminate this practice.

(C) Defendant's "feeder system" has also been used to perpetuate racial segregation of students. This system, as used by the defendant, tends to filter Negro and white students, who initially began their education in segregated elementary schools, into segregated junior and senior high schools. Such a system, if properly oriented, may be a constitutionally permissible step in the integration of the public schools. See *Monroe v. Board of Commissioners of the City of Jackson*, *supra*. However, where such a system is used to perpetuate segregation, as here, it violates the requirements of *Brown v. Board of Education*.

(D) Defendant has failed to take immediate and effective steps to desegregate its teachers and school personnel. Where such integration has taken place, the school personnel assigned have consisted primarily of librarians, music, art, reading and Special Education teachers. Schools with large Negro or white student enrollments have fairly completely segregated faculties. This practice fails to meet the constitutional mandate of the Supreme Court, the United States Court of Appeals for the Fourth Circuit and the Court order entered in this case.

Motion for Further Relief

(E) Defendant has followed a practice and policy of discrimination against predominantly or all-Negro schools by providing them with inferior educational programs and facilities. Defendant has maintained ability grouping ("advanced," "regular," and "basic") systems in predominantly white schools. Negro students in predominantly white schools, are for the most part, relegated to the lower groupings and given little opportunity to reach the "advanced" levels. In general, the curriculum in the white schools is broader and more varied than that in the Negro schools.

Defendant has failed to provide adequate funds for building and school construction and the purchase of needed school facilities at the all-Negro or predominantly Negro schools. Funds even though immediately allocated to Negro schools have been diverted to white schools often to the detriment of the Negro schools. Moreover, even with the construction of new schools or the additions to existing schools, the effect has been to limit the integration of schools. There is presently no plan for the construction of new schools which would bring together a highly integrated student body.

WHEREFORE, plaintiffs respectfully pray that this matter be set for hearing at the earliest possible date and that upon such hearing the Court permanently enjoin defendant:

(1) to present a plan within a period of time that will permit its implementation at the beginning of the 1969-70 school year, establishing school zone lines, school and grade consolidation, or both, in order to completely desegregate all schools in the school system, and to eliminate the racial identity of the various schools;

Motion for Further Relief

- (2) to completely desegregate all teachers and school personnel in the school system so that for the 1969-70 school year the percentage of Negro and white teachers and school personnel in all schools in the system will approximate the number of Negro and white teachers in the school system;
- (3) to cease planning and constructing schools, additions to schools, and school facilities on the basis of race and color. In this connection, that the defendant be enjoined to present to the Court, with copies being served upon plaintiffs, a report of any planned construction, addition, alteration or closing;
- (4) to eliminate, effective with the beginning of the 1969-70 school year, any and all disparatives in school facilities, school buildings, curriculum and equipment;
- (5) to discontinue and eliminate any and all other practices in the school system based on race and color.

Plaintiffs further pray that pending a full and complete implementation of the Order of the Court that the Court retain jurisdiction of this cause; that the plaintiffs be awarded the causes herein and granted such other and further relief as the Court may deem equitable and just.

Motion for Further Relief

Respectfully submitted,

CONRAD O. PEARSON

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Durham, North Carolina

JULIUS LEVONNE CHAMBERS

JAMES E. FERGUSON, II

JAMES E. LANNING

216 West Tenth Street
Charlotte, North Carolina 28202

JACK GREENBERG

JAMES NABRIT, III

ROBERT BELTON

10 Columbus Circle
New York, New York

Attorneys for Plaintiff

Answer to Motion for Further Relief

(Filed September 6, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION No. 1974

JAMES E. SWANN, *et al.*,

Plaintiffs,

—vs.—

THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION,

Defendant.

The defendant, answering the motion of the plaintiffs filed herein on the 6th day of September, 1968, says and alleges

1. The allegations of paragraph 1 deal with matters and things appearing of record in this case and this defendant is not required to either admit or deny said allegations, except that it is alleged that this cause was initially filed on January 12, 1965.

2. The allegations of paragraph 2 deal with matters and things appearing of record in this case and this defendant is not required to either admit or deny the same except that it is denied that further modification of the District Court order of July 14, 1965 is justified.

Answer to Motion for Further Relief

3. Answering the allegations of paragraph 3, it is admitted that since said Court order of July 14, 1965, the defendant has abolished the dual school system as it relates to race, has made some necessary changes in boundary lines of attendance areas, has constructed and made additions to new schools and old schools and has permitted pupils to transfer from one attendance area to another when there was sufficient room in such other attendance area to accommodate the pupils. Except as herein admitted the allegations of paragraph 3 are denied.

4(A). The allegations of paragraph 4(A) are denied.

4(B). Answering the allegations of paragraph 4(B), this defendant denies that the transfer plan permitting pupils to transfer from one attendance area to another has been for the purpose of perpetuating segregated schools and this defendant alleges that such transfer plan has been used by pupils without regard to race and has proven of value and convenience to pupils without regard to race.

4(C). The allegations of paragraph 4(C) are denied.

4(D). The allegations of paragraph 4(D) are denied.

4(E). The allegations of paragraph 4(E) are denied.

Wherefore, the defendant prays the Court that the relief demanded by the plaintiffs in said motion be denied, that this action be dismissed and that this plaintiff recover its cost and have such other and further relief as it may be entitled to receive.

BROCK BARKLEY

Attorney for the Defendant

814 Law Building

Charlotte, North Carolina 28202

Transcript of Hearing March 10, 1969**[18] * * ***

All right, the plaintiffs may proceed with their testimony.

Mr. Chambers: We would like to identify Plaintiff's Exhibit #1, Defendant's answers to plaintiff's interrogatories of September 9, 1968, defendant's answers being dated October 31, 1968.

Court: This is the defendant's answers?

Mr. Chambers: Yes, sir, defendant's answers. As Plaintiff's Exhibit 2 the defendant's answers to plaintiff's interrogatories of January 31, 1969, defendant's answers being dated March 3, 1969. We would like permission of the Court to substitute the original of these answers now on file with the Clerk in lieu of our copies.

Court: I was looking at the exhibit and didn't realize you were asking a question. You asked if the original might [19] be substituted, it may be, yes.

Mr. Chambers: Plaintiff's Exhibit 3, Collective Exhibit 3, consists of the depositions of Mrs. Gertrude Coward, Mr. James Burch, Mrs. Mary Jane Kistler, Dr. Robert C. Hanes, Mr. Joseph Frankford, Mr. John B. Phillips; Mr. William L. Anderson, Mrs. Ann Hausmann, Mr. Carroll C. York, Mr. John W. Harrison, Mr. Henry L. Smith, Mr. Ralph W. Eaton, Mr. Herbert L. Puckett, Mr. James Clark, Mr. J. B. Davis, Jr., Dr. James Mikaelson, Mrs. Dorothy Boone, Dr. Leslie Bobbitt, Dr. William C. Self, and Mr. William E. Poe.

Plaintiff's Exhibit #4 I'd like to identify an overlay showing the racial housing pattern in the City of Charlotte.

Court: That's an overlay on itself or on something else?

Mr. Chambers: It's an overlay of the County map of the various district lines of the School Board.

Mr. Chambers: Prepared by Mr. Green. We will call him as the first witness. We just wanted to identify them

Colloquy

now. As Plaintiff's Exhibit 5, a census tract map of Mecklenburg County for 1960.

Court: What is a census tract map?

Mr. Chambers: The Bureau of the Census prepares various districts for the County for census purposes.

Court: What does a tract mean?

【20】 Mr. Chambers: That is the district, the tract itself.

Mr. Barkley: We are not admitting the competency.

Mr. Chambers: Plaintiff's Exhibit 6, we have a racial breakdown on the census tract map showing the percentages of non-whites in the various tracts in the City of Charlotte as of 1960. As Plaintiff's Exhibit 7 we have an overlay of that census tract map showing the racial composition as of 1968, October 31, 1968. As Plaintiff's Exhibit 8 we have a map showing the income for family in the various tracts of Mecklenburg County as of the 1960 census. As Plaintiff's Exhibit 9 we have a zoning map for the City of Charlotte for 1947.

Court: Mr. Chambers, we have some visitors in the back who may be personally involved in the suit. Is the nice looking lady in the back row in charge of these folks? Are you the teacher?

Voice from the Audience: Yes, I am.

Court: If you'll tell us who you are, we'll be glad to welcome you to the court as long as you want to stay.

Mrs. Kelley: Thank you. I am Betsy Kelley, member of the School Board and this is a group of students from St. Gabriel's Elementary School, eighth graders.

Court: We are glad to have you with us, Mrs. Kelley.

Mr. Chambers: Plaintiff's Collective Exhibit 10, zoning ordinance for the City of Charlotte 1968 and the 【21】 zoning maps with index for the City of Charlotte 1968. Plaintiff's Exhibit 11, copy of zoning ordinance for the County of Mecklenburg.

Colloquy

Court: Is that current?

Mr. Chambers: Current. Plaintiff's Exhibit 12, a publication of the Charlotte-Mecklenburg Planning Commission entitled The Next 20 Years with the map showing the recommended residential zoning and industrial zoning for the next twenty years for the City of Charlotte. Plaintiff's Exhibit 13, a map showing the major thoroughfares for the City of Charlotte dated June 1, 1968. Plaintiff's Exhibit 14 a map showing the urban renewal areas for the City of Charlotte dated November, 1968. Plaintiff's Exhibit 15, a publication of the Charlotte-Mecklenburg Planning Commission entitled Residential Blight in Charlotte dated September, 1962. Plaintiff's Exhibit 16, a copy of a publication of the Charlotte-Mecklenburg Planning Commission entitled Review of Community Facilities, dated 1964. Plaintiff's Exhibit 17, a copy of publication by the Charlotte-Mecklenburg Planning Commission entitled A Statistical Summary of Population and Economic Data dated March, 1968. Plaintiff's Exhibit 18, publication of the City of Charlotte entitled Model Neighborhood Proposal dated April, 1967. Plaintiff's Exhibit 19, a copy of the Workable Program Report submitted by the City of Charlotte to the United States Department of Housing and [22] Urban Development, dated January 27, 1969. Plaintiff's Exhibit 20, a two volume publication of the Charlotte Area Fund prepared by the North Carolina Fund entitled A Profile of Community Problems dated 1964. Plaintiff's Exhibit 21, a publication of the Charlotte Area Fund prepared by the North Carolina Fund entitled Characteristics of Individuals in Areas Served by the Charlotte Community Action Program, dated August, 1967. Plaintiff's Collective Exhibit 22, a copy of the Code of the City of Charlotte 1946, Chapter 14; Code of the City of Charlotte 1946, Chapter 1; Code

Colloquy

of the City of Charlotte 1931, Chapter 5, Section 320(a), Chapter 14, Sections 483 through 486, Chapter 15, Section 544; Code of the City of Charlotte dated 1902 showing the City census Part 1 and the unofficial appendix attached to the code. Plaintiff's Collective Exhibit 23, interim reports and summary prepared by Engelhardt & Engelhardt for the Charlotte-Mecklenburg Board of Education.

Your Honor, for the purpose of the hearing we would like to identify also exhibits that are attached to defendant's answers to interrogatories which show elementary, junior high and senior high school distribution for the City of Charlotte.

We'd like to follow with Exhibit 24, a map of the City of Charlotte elementary school districts; as Plaintiff's Exhibit 25 the map of the City of Charlotte junior high [23] school districts; and as Plaintiff's Exhibit 26, the map of the senior high school districts for the school system.

Court: What vintage is that?

Mr. Chambers: 1968-69.

Court: Are they separate, you say the City of Charlotte.

Mr. Chambers: The Charlotte-Mecklenburg School System.

Court: You're still talking about the same thing. Those three are all 1969.

Mr. Chambers: 1968-69 school year. We'd like to call at this time Mr. Green.

Court: Let's take a ten minute recess.

SHORT RECESS

Mr. Chambers: In connection with Plaintiff's Exhibit 14, we have a statistical listing by the Charlotte Redevelopment Commission showing where families in the urban

Charles L. Green—for Plaintiffs—Direct

renewal areas were located and we'd like to have this document attached to our Exhibit 14.

Court: All right.

Mr. Barkley: We haven't had a chance to read any of these or check them. We have agreed that we will admit that the source of the material comes from where it appears that it comes. This particular document, it doesn't show it, but we have one like it and we will admit it comes from the Redevelopment Commission.

Court: Let me see if I can put this question in a [24] light that will leave everybody at ease about it. I intend to entertain all objections to any evidence before the record is closed, but I intend to consider all evidence that is pertinent to the case that is introduced if, in my opinion, it is pertinent to the case and is not incompetent for some clear reason. But all of these exhibits are being accepted subject to your right to make any objection that appears when you have had time to study them and before the record is closed with the presumption being that the Court is going to sift the wheat from the chaff in making any decision that is made and with your objections in mind when that is done.

Mr. Barkley: It is understood that we do not admit the competency of any of this material.

Court: That's all right.

Mr. Chambers: As Plaintiff's Exhibit 27 we'd like to introduce a copy of the regulations of the Department of Agriculture dealing with the school lunch program.

CHARLES L. GREEN, a witness for the plaintiffs, having first been duly sworn, was examined and testified as follows:

Charles L. Green—for Plaintiffs—Direct

Direct Examination by Mr. Chambers:

Q. Will you state your name, please? A. Charles L. Green.

Q. What is your address, Mr. Green? **[25]** A. 711 Baugh Building in Charlotte.

Q. What is your occupation, Mr. Green? A. I am engaged in Marketing Research.

Q. Would you describe for the Court what this consists of? A. It consists of various studies, statistical, primarily in the development of information dealing with a number of things, socio-economic problems, the testing of radio commercials, interviewing people for consumer products, sales, any sort of information that is concerned with marketing or social problems.

Q. Does your work consist at any time of counting houses or where people live or determining where people live? A. That is correct. I have done a considerable amount of this type of work.

Q. How long have you been involved in this particular kind of practice? A. Since 1954.

Q. In studying where people live, have you concerned yourself with racial areas where people live, whether they were black or white? A. I have done a study on this, yes, sir.

Q. Have you studied residential patterns according to the income of families? A. This was in connection with the study on the white and non-white population distribution.

[26] Q. Now, were you requested, Mr. Green, to make a study of the City of Charlotte for us for this lawsuit? A. That is correct.

Q. Were you requested to do a map to show the racial housing patterns in the City of Charlotte? A. That is correct.

Charles L. Green—for Plaintiffs—Direct

Q. Were you requested to do a study for the plaintiffs to show the income of families according to the census tract? A. That is correct also.

Q. Did you prepare such maps? A. I did.

Q. I show you a document which has been marked plaintiff's Exhibit 4 and ask if you prepared this document. A. I did, sir.

Q. Would you state for the record what this exhibit is. A. This is an overlay of a map of Mecklenburg County. On the overlay the census tracts are outlined and the overlay itself is color-coded by census tract as to the percentage of non-white population within the individual tract. These percentages are as of September 1, 1968. I think you should clarify that in view of the other exhibits.

Q. The overlay, Plaintiff's Exhibit 4, is a representation of the non-whites in the various census tracts as of September 1, 1968? A. Right.

【27】 Q. Now I show you a document marked Plaintiff's Exhibit 5 and ask if you will tell us what that is. A. This is a blank census tract map showing the census tracts within the Charlotte area, commonly called the urbanized area of Charlotte.

Q. Who prepared that document, Mr. Green? A. The base map was prepared by the Bureau of Census.

Q. Do you know the basis for the divisions of the tracts? A. The Bureau of Census, in connection with a local committee, establishes census tracts and they try as much as possible to get homogeneous groups of population, income, size, not necessarily geographic size but the size of the population should be fairly consistent. The average of 4000 is the national average within a census tract.

Mr. Waggoner: We object to this line of testimony because it's based on what he assumes other

Charles L. Green—for Plaintiffs—Direct

people have done and at best on hearsay.

Court: Is this identification necessary for any testimony he is going to give? It's a map of an area. Do I understand you're going to fill in what you want the Court to know about his testimony?

Mr. Chambers: Yes, sir.

Court: I think the objection is technically well taken. I'll sustain it.

Q. Mr. Green, is there a publication that sets out how the [28] census tracts are established? A. Yes, sir.

Mr. Chambers: I'd like to identify as Plaintiff's Exhibit 28 a document prepared by ServAnalysis of Charlotte entitled Charlotte, North Carolina, Census Tracts 1 through 54, estimates of number of households and populations by tract as of June 1, 1966.

Mr. Barkley: It's not contended that was prepared by him, is it?

Mr. Chambers: By Mr. Green. I'm just going to establish that.

Q. Would you look at that document, Mr. Green, and tell us what it is? A. It is an update of the 1960 census figures, estimated number of households and population by census tract in the '54 urban census tracts of Charlotte as of the 1st of June, 1966.

Court: Updated from—?

A. 1960 census figures.

Q. Did you prepare this document, Mr. Green? A. I did.

Q. I show you another document marked Plaintiff's Exhibit 6 and ask if you will state what this is? A. This is a

Charles L. Green—for Plaintiffs—Direct

map showing by census tract the percentage of non-white population in Charlotte as of 1960. These are 1960 census figures.

【29】 Q. Did you prepare that document, Mr. Green?
A. I did, sir.

Q. I show you a document marked Plaintiff's Exhibit 7 and ask if you will state what that is. A. This is an overlay for Exhibit 6, which is the previous map, showing the estimated percentages of non-white population in the census tracts of Charlotte as of 1968, September 1.

Q. I show you a document marked Plaintiff's Exhibit 8 and ask if you will state what that document is. A. This is a map showing by census tracts the median family income for the Charlotte census tracts as of 1960. These also are Census Bureau figures.

Court: Is this exhibit something you prepared?

A. Yes, sir.

Court: You prepared #4, #6, #7 and #8?

A. That is correct, Your Honor.

Q. Mr. Green, would you state to the Court the procedure you followed in preparing Exhibit #4? A. Well, having the 1960 census figures and the percentages and the number of people within the various tracts according to race, I had conferences with the City Planning Commission, with the Redevelopment Board, relocation people, with real estate agents, with the Chamber of Commerce, with various and sundry people who would have some knowledge of any shift in population since 1960. We established roughly the areas [30] into which there had been population shifts, especially of the non-white. That

Charles L. Green—for Plaintiffs—Direct

was really the main thing we were trying to determine, where the non-white population had migrated since 1960. Having established these areas, we were then able to work from small maps that the Planning Commission has and street by street to come up with percentages of the non-white population on these streets. This was done only in the areas of transition. There were some areas that were quite obvious there had been no change, no significant change. Having established these percentages, of non-white population, we could then equate that to numerical population. The overlay was prepared from the percentages. It is color-coded in 20% gradations.

Q. Looking at the overlay, Mr. Green, would you tell the Court the various percentages represented by the colors?

Court: Are they set out on the face of the exhibit?

Mr. Chambers: Yes, sir.

Q. Would you accompany me over here to this map and explain how this overlay is to work on the maps of the School Board? (The witness does so.) Mr. Green, where would your greatest concentration of non-whites reside?

A. Your greatest concentration of non-whites would be in the areas of shaded purple. That percentage runs from 81 to 100% of non-white population, in these purple areas.

Q. That would include this section down here indicated by 23? [31] A. That would include census tract 23.

Court: Is that near Griertown?

A. Yes, sir.

Q. As you indicated just a moment ago, the overlay is based on the various census tracts? A. That is correct. The black lines on the overlay are the outlines of the census tract

Charles L. Green—for Plaintiffs—Direct

boundaries. These are the census tract numbers.

Q. Now, while you're there, Plaintiff's Exhibit 8 is also based on the census tract as of 1960, is that right?

Court: This exhibit on the board, #4 and 24, this speaks as of what time, 1968?

A. Yes, sir.

Court: Go ahead.

Q. This exhibit shows the income level in the community as of 1960, is that correct? A. That is correct.

Court: You're talking now about exhibit what?

Mr. Chambers: Exhibit 8.

Q. The only difference in your Exhibits 6 and 7 and Exhibit 4 is that you show a change in the population in Exhibit 6 and 7 from 1960 to 1968. A. Right.

Q. Take the stand. (The witness does so.)

Mr. Chambers: I'd like to mark as Plaintiff's Exhibit **【32】** 29 copies of the census tracts 39 and 36, and as Plaintiff's Exhibit 30 copy of the census tract 38.

Q. Mr. Green, would you look at Exhibit 29 and explain to the Court what that is? A. Your Honor, this is a more detailed map of all portions of these two census tracts. They are two that are in transition as far as black and white inhabitants go.

Court: Those tracts are what?

Charles L. Green—for Plaintiffs—Cross

A. Tract 36 and Tract 39.

Court: Where is that in the town?

A. Both of these tracts are bounded on the north by the Southern Railway tracks. They are in the western part of town, West Boulevard runs through them. You get into the Clanton Park area.

Q. Would you look at Exhibit 30 and tell the Court what that exhibit is? A. This is also a more detailed map of census tract 38 which is north of Yorkmont Road. It runs over off the Revolution Park area. All three of these tracts are together. This is the northern portion and this includes also portions of the Clanton Park, Rolling Wood area.

Q. Mr. Green, you prepared the Exhibit 4, the Exhibit 6 and 7, the Exhibit 29 and 30 which you have just been testifying about. In your opinion do they truly and accurately represent the non-white population in the County of Mecklenburg? [33] A. Yes, sir, I think they do. We consider they are accurate within plus or minus 5% which, in the fields of statistics, is quite an acceptable figure.

Q. You also prepared Exhibit 8, which is the income distribution by census tract for 1960. In your opinion does that exhibit truly and accurately represent the income by census tract for 1960? A. I think that as far as Government figures go, that is 100% accurate.

Mr. Chambers: I have no further questions.

Cross Examination by Mr. Barkley:

Q. Mr. Green, what is your profession? A. Marketing research.

Q. Did you graduate from college in Marketing Research?

Charles L. Green—for Plaintiffs—Cross

A. No, sir. My degree is Bachelor of Science on Commerce. It included courses in marketing, marketing research, statistics. At that time we were required to write a thesis for a degree and my thesis was in the field of Marketing and Research, or Polling, really, at the time.

Q. Where did you graduate? A. Washington and Lee University.

Q. When did you graduate? A. 1949.

Q. And you went into this business in 1954? [34] A. Yes, sir.

Q. For whom do you prepare charts and make surveys of this nature? Have you done this before? A. Yes. Some of my clients have included local banks in connection with the location of branch banks, the Chamber of Commerce, the Model Cities people, several insurance companies. There is a wide range of people who need and use marketing research of one kind or another.

Q. And your specialty is Marketing Research, I would figure. A. Yes, sir.

Q. Now, this overlay that you have here, Exhibit #4, it's not based on school attendance lines under any circumstances, is it? A. No. My commission was to work by census tracts.

Q. And you worked solely by census tracts? A. That is correct, yes, sir.

Q. And you have no knowledge as to the attendance areas in those particular sections? A. Not as such, no, sir. I tried to do no correlation between the two.

Q. Can you tell us the approximate distance between the southern boundary of this purple, which I believe you say is colored, and the northern boundary, just your best estimate as to the number of blocks or miles that it would be. A. Sir, would you object if I came closer?

Charles L. Green—for Plaintiffs—Cross

【35】 Q. Well, the northern boundary of the Negro area with the southern boundary of the Negro area, which appears to be about Dilworth Road. A. It runs up to I-85, if I am not mistaken.

Q. That is what it may be, yes. A. Well, I would estimate that that would possibly be five miles.

Q. Now what is the yellow here, the orange, what is this supposed to show? A. You have the color-coding chart on the overlay, sir. I do not have it before me.

Q. You don't remember what your code was? A. No, sir, I code so many things it's difficult to remember.

Q. Well, on your code of orange you have 61-80%, what does that mean? A. That means that within the census tracts coded in orange your estimated non-white population is between 61 and 80%.

Q. It would be between 61 and 80%? A. Yes, sir.

Q. Now, what area of the community is that, do you know? A. That is west of Pineville Road and parts of South Boulevard, your large area there.

Q. Well, would that also take in large residential areas in there? A. Yes, sir. Parts of those tracts are industrialized but the southern part of, I think it's tract 38, the lower part there, 【36】 has had a tremendous residential growth in the past several years.

Q. And you say that is only 61% white? A. Non-white, sir.

Q. 61% non-white? A. Yes, sir.

Q. Do I understand that a majority of the people living in the area shown by the orange color would be Negro? A. That is correct.

Q. What residential areas does it embrace?

Charles L. Green—for Plaintiffs—Cross

Mr. Chambers: Your Honor, Mr. Green would like to come down and look at the map.

Court: Go on down and look at the map.

A. I would like to look at it, sir. (The witness goes to the map.)

Q. This area here 38 and 39, first tell me, if you can, roughly where does it run? A. This is Camp Green, I believe it runs south of the Southern Railway tracks over to the Wallace Neil Road. It runs then on Byrum Drive and down to Beam Road to the Arrowood Road and then over to the Pineville Road.

Q. The southern part of that tract is Pineville Road, then? A. The boundary, yes, sir.

Court: Mr. Green, you're going to get me confused right at the beginning. I think Pineville Road runs [37] north and south and the Southern Railroad runs east and west. I'm wrong, of course, geographically, but that's the way it always seems to me. You're talking about an area west of the Pineville Road and south of the Southern Railroad generally speaking?

A. Yes.

Court: And it runs generally along the west side of South Boulevard and Pineville Road for three or four miles and extends along the Airport Road and south of that?

A. Yes, sir.

Court: What is the northern boundary, the upper boundary the way the map is hanging now?

Charles L. Green—for Plaintiffs—Cross

A. The upper boundary would be the Southern Railway.

Q. And what is this neighborhood in here? A. Arrowood Road down here.

Q. And you say that is 60% black? A. Between 60 and 80%, yes, sir. You see, you have a large concentration up in these areas.

Q. What does this green mean? Is that industrial or business? A. No, sir. That means between 41 and 60% of the population is non-white. The witness returns to the stand.)

Q. Did you make the samples yourself from which you determined your estimate of the population within the area? A. I don't understand your question, sir.

【38】 Q. Did you examine the residents to determine the number of Negro residents in a given area? A. Yes, we sampled. We did a great deal of visual inspection.

Q. How many people would you see during the course of your sampling? A. In certain areas there was no need to sample. In a transition area in some cases we checked each household.

Q. What are the transition streets or areas, can you tell me that? A. I can tell you by tract numbers. Would that help any?

Court: It won't mean a thing.

A. Well, your main areas are in the Clanton Park, Rolling Wood and Barringer Wood areas. You have some transition up off Tuckasegee Road. You have had a great deal over in the northeastern part of town, headed up towards North Charlotte, starting at the Seaboard Railroad tracks and working up north towards the North Charlotte area, up through Belmont and Villa Heights. That is in a tremendous state of transition. You're having some transition off

Charles L. Green—for Plaintiffs—Cross

North Tryon Street. Those are the major areas of transition.

Q. Your study wasn't concerned with the white race as far as its location and transition. A. Only in respect to if you get percentages for one, you have the percentage for the other.

Q. That would be by deducting the black percentage from the [39] total, would it not? A. Yes, sir, that's correct.

Court: Did your studies take into account that we've got a lot of pastureland where there used to be a lot of people living?

A. We allowed for that, yes, sir. It also takes into consideration the fact that there has been a considerable amount of demolition of housing through the Urban Renewal Programs and express right-of-ways, and such.

Q. You were really looking for transition areas, weren't you? A. I was looking for the total picture. The transition areas were the ones that we had to devote the most time to. There was no point, really, in taking a sample of the Greenville area, for instance, because that is, I would say, 100% non-white population.

Mr. Barkley: That is all I care to ask him, if it please the Court.

Mr. Chambers: Does the Court have any questions?

Court: No, sir.

Mr. Chambers: Thank you very much, Mr. Green.

* * * *

Daniel O. Hennigan—for Plaintiffs—Direct

DANIEL O. HENNIGAN, a witness for the plaintiffs, having first been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Chambers:

Q. Will you state your name, please? A. I am Daniel O. Hennigan. The O is Othello.

Q. What is your address, Mr. Hennigan? A. 2500 Newland Road.

Q. That's here in Charlotte. A. Here in Charlotte.

Q. What is your occupation? A. I am an ordained Presbyterian Minister and a real estate broker.

Q. Would you tell the Court your educational background? **¶42** A. Yes. I completed the elementary and high school education, Salisbury, North Carolina; I am a graduate of Johnson C. Smith University, both college and seminary with majors in mathematics and Bachelor of Divinity.

Q. Have you had any further study since then? A. Not formally. I have attended a number of institutes in relationship to appraising and in relationship to the pursuit of brokerage work, etc. I have not pursued anything in terms of a Masters or Doctorate.

Q. Were you born in Charlotte? A. I was not. I was born in Salisbury and at the age of 2 I came to Charlotte. My father and grandparents, this is their home, and from age 2 on I have lived principally in Charlotte and Salisbury, North Carolina. Because of family reasons I did my elementary and high school education in Salisbury. However, until that time I lived in Charlotte and after which I returned to Charlotte.

Q. Where did you live when you first moved to Charlotte?

Daniel O. Hennigan—for Plaintiffs—Direct

A. My home place is on Douglas Street, 2224-26, and my grandparents on my father's side have lived here as long as I can remember.

Q. Is Douglas Street in the northwestern part of Charlotte? A. It is.

Q. Is it out near Johnson C. Smith University? A. Beyond Johnson C. Smith University. Douglas Street intersects [43] Beatties Ford Road, or enters Beatties Ford Road. It does not go all the way across, just in front of the City Water Works.

Q. When you first moved to Charlotte had Beatties Ford Road developed to the extent that it is today? A. It had not. Beatties Ford Road was, of course, one of the main and respected streets and so was Douglas Street at that time and perhaps was the section where most of the echelon Negroes lived when I was a boy.

Court: What is your age, Mr. Hennigan?

A. Sorry you asked that, sir, but I am 43.

Q. Now, when you first moved to Charlotte had the Grier-town area been developed to the extent that it is today? A. Grier Heights had not been developed. When I first moved to Charlotte there was some scattered families in that section. Arthur Grier developed the Grier-town section I think somewhere around age 12 or 13. I was somewhere in that age range when the Grier Heights section developed as a community as such under the leadership of the late Mr. Arthur Grier.

Q. Had the Cherry section of Charlotte developed to the extent that it is today? A. The section in Cherry was a budding community and had developed to some extent but not to the extent to which it is today. Cherry, as most of

Daniel O. Hennigan—for Plaintiffs—Direct

us who are settlers in Charlotte know it, is the section that was principally developed for [44] the convenience of those who were servants to the Myers Park and I believe the Dilworth area, and this characteristically is what Cherry has meant to the City of Charlotte and to us who have lived here.

Q. Would these servants be black or white?

Mr. Barkley: I don't want to be interrupting the court but we object to all of this testimony. I take it to be testimony relative to racial patterns. I don't want to keep interrupting the Court but it is understood we can object to these questions after they are all in!

Court: Yes, sir. It's all right with me if you object at any time.

Mr. Barkley: I just don't think it's competent.

Court: I have a little trouble knowing what is relevant and what isn't. This would be competent, if relevant, and I think we just have to go ahead and find out what the relevance is. There may not be any. You may object any time or later on, if you want to. The real problem is one of relevance to any question the Court has to decide.

Mr. Barkley: Yes, sir, I think relevance is more correct than my idea of incompetency. The point that I am undertaking to make is that the testimony with reference to racial patterns, residential patterns, is [45] not relevant to this case.

Court: I'd have to turn my strainer down a little finer than I have it now to say it's not relevant. So let's go on and see what he says. If it's not relevant, it will be disregarded.

Daniel O. Hennigan—for Plaintiffs—Direct

Q. Mr. Hennigan, what were basically the Negro or black sections of Charlotte when you moved to Charlotte?

Court: When is this you're talking about now, what year?

Q. What year did you move here, Mr. Hennigan? A. 1927, or '28.

Q. What basically were the Negro or black areas of Charlotte at that time? A. Greenville was a Negro community at that time. The Brooklyn area and, of course, the First Ward area, and we have mentioned already the Cherry community and of course, the Grier Heights area. These were the principal Negro communities at the time I came to Charlotte.

Court: How do you locate the Greenville area today?

A. How do I locate it?

Court: How would you describe it?

A. Generally the northwest section. Statesville Avenue back over to Beatties Ford Road and Beatties Ford Road on now to the new I-85 which, I guess, would be a natural divider. We normally consider it to be in the northwest section.

【46】 Court: How far into town do you come in locating what you refer to as Greenville?

A. We come to the Seaboard Railroad. That comes across, let's see—there's a school there on Burton Street, Fairview

Daniel O. Hennigan—for Plaintiffs—Direct

I believe it is, and the Seaboard Railroad track comes across there on the other side of that property and on—

Court: Generally north between Beatties Ford and Statesville Road?

A. That's right. Oaklawn Avenue, perhaps, would be the other boarder for Greenville going north?

Court: Oaklawn?

A. Oaklawn.

Court: Oaklawn is a Quartermaster Depot, isn't it?

A. No, that's on Statesville Avenue, between Graham and Statesville, and Oaklawn is, I guess, the last natural thoroughfare this side of Newland Road and the next thoroughfare going across to Beatties Ford would be I-85.

Mr. Chambers: I'd like to identify as Plaintiff's Exhibit 31 a map of the City of Charlotte as of 1950 with various census tracts and wards.

Mr. Barkley: Let the map speak for itself. We admit the source of the map is as stated on the bottom but we don't admit anything else.

Court: All right, sir.

Mr. Chambers: And as Plaintiff's Exhibit 32, census [47] population figures by wards for the City of Charlotte 1940.

Q. Mr. Hennigan, you were talking about the general Negro areas of the City as of the time that you moved

Dan

Tennigan—for Plaintiffs—Direct

here. Could you point out by words on the Exhibit 31 the normally referring to? A. Yes, I can. What we this map to be the Brooklyn area is designated on First Ward 1 and 2. What we consider to be the C ormally—

as i u say that First Ward was thought of A. No. I Brooklyn?

lyn area is we norm that what we consider to be the Brook- north of ed as Wards 2 and 1 on this map. What as Wards der to be First Ward is that section le Street and I believe it's shown here

W:

isn't the line between First and Second A. Just Trade or Elizabeth Avenue?

This is n

correct. think we have the map turned around. north of In that particular case, that would be that with Trade would be Wards 1 and 2 and then that would be Wards 3 and 4. May I correct area is d en being in its proper direction we find we norm normally consider to be the Brooklyn designat n this map as Wards 3 and 2 and what

Q. No er to be [48] the First Ward area is Smith be map as Wards 1 and 4.

4 would ould the residents around Johnson C. map. Of n that map, in which ward? A. In Ward ignation of Johnson C. Smith on this S beyond Ward 4.

d First Ward extend west of Tryon d not, did it?

Daniel O. Hennigan—for Plaintiffs—Direct

A. It did not extend west of Tryon. It extended east of North Tryon.

Court: I had the notion that the wards were numbered starting at Tryon you just go around the clock, 1, 2, 3 and 4, clockwise.

A. That's generally correct. I believe those four wards are around Tryon Street and I believe Ward 4 is from Tryon to Graham or Statesville, basically, and then of course the Greenville area adjoining Ward 4 going in a northerly direction which is not shown on that map.

Court: Does this make a difference in reading the exhibits?

Mr. Chambers: No, Your Honor, we just wanted to indicate where the areas were.

Court: Let's go on to something else, then.

Q. Mr. Hennigan, you have had an opportunity to observe the growth and development of Charlotte since you moved to Charlotte? [49] A. Yes, I have.

Q. Now, how long have you been in real estate as a broker? A. Since the spring of 1962.

Q. Has all of that time been here in Charlotte? A. It has been.

Q. Have you in your work had an opportunity to purchase property for clients? A. I have.

Q. Have you had an opportunity to sell property for clients? A. I have.

Q. Have you had an opportunity to rent apartments or houses for clients? A. I have.

Q. Have you had an opportunity to know the City of Charlotte residentially? A. I have.

Daniel O. Hennigan—for Plaintiffs—Direct

Q. Have you in your work, Mr. Hennigan, encountered any discrimination in the sale or rental of houses?

Mr. Barkley: I'll object to that. I don't believe—how can you answer a question like that.

Court: What is the pertinence of this, Mr. Chambers?

Mr. Chambers: Your Honor, our contention here is that the residential housing pattern has developed through public and private discrimination and we propose to show through Mr. Hennigan and his experience in real [50] estate that we have had private discrimination in Charlotte in the sale and rental of housing. The Fourth Circuit Court of Appeals in the Norfolk school case indicated this would be a relevant and pertinent inquiry by the Court and we were trying to establish here that we have the housing pattern because of practices that the Court said should be considered by the District Court. I might say further that in the Fourth Circuit opinion that we are referring to, Brewer versus Norfolk City School Board, the Court specifically indicated to the District Court that the inquiry there should be whether the racial housing pattern in the City of Norfolk developed from public or private discrimination or both and that, if so, that the School Board would not be able to utilize the basic boundary lines they were then employing for the assignment of high school students to the school. This is our contention here relevant to the elementary, junior high and senior high schools.

Mr. Waggoner: We have a copy of the Brewer case and I can read the language Mr. Chambers was

Colloquy

referring to in its entirety, if you like. It's about one paragraph.

Court: I'm a little puzzled. You know, it's rough enough on a green judge when you allege what you're complaining about, but when you don't allege what you're [51] complaining about the theory is just a little strange, you make it even harder. You don't say anything in your pleadings about this subject you're now going into.

Mr. Chambers: In the motion for further relief we do, Your Honor.

Court: This is what I've just gotten through reading and I don't find anything in here on that point. That's not the end to inquiry on it, of course, but I just say you're launching off on a mission of your own on uncharted country as far as this case is concerned. Does it make any difference on your theory whether you do or don't prove the motive by which a pattern of living is developed?

Mr. Chamber: Your Honor—

Court: I don't think we can sit here and try the whole community and go into all the forty thousand reasons people build houses where they did as opposed to another over a forty-year period.

Mr. Chambers: We would contend that it should not make any difference. However, the Fourth Circuit said that this should be an inquiry by the District Court.

Court: Let me see the Brewer opinion.

Mr. Waggoner: Yes, sir. This is not very clear.

Court: Here it is. I don't see that an historical [52] study of why people bought, built, sold and rented houses is going to help us any, but if you want to pursue it, I'll hear what he knows about it.

Daniel O. Hennigan—for Plaintiffs—Direct

Q. Mr. Hennigan, have you encountered in your practice any discrimination in the sale, racial discrimination in the sale or rental of houses in Charlotte?

Mr. Barkley: I object to that as to the form of the question. Discrimination, I take it, is a conclusion from facts and not a fact itself.

Mr. Chambers: I'll rephrase the question.

Court: I think the objection is well taken. I don't know the history of Charlotte thoroughly but I would figure from what the place looked like twenty-five years ago that there had been mighty little built here from 1930 to about 1947, or '46, '45, and that whatever pattern was established, whatever building was done in these zones you're talking about had already been done in 1927 when he moved to town. This is a theory you're developing by an incompetent witness, I think. What he could testify about what happened after 1962 in the way of discrimination probably wouldn't be of any pertinence because you had a situation existing at that time in which the present school system operated. Am I wrong about that?

Mr. Chambers: Your Honor, I think we can establish [53] some practices of discrimination that further perpetuated the housing pattern subsequent to '62. In addition, I think that from 1929 when he moved to Charlotte until the time that he actually became involved in real estate, he can testify of his own knowledge of practices that existed that contributed to the racial housing pattern. That testimony as well as that subsequent to 1962 would clearly be competent. We have some other matters

Daniel O. Hennigan—for Plaintiffs—Direct

that are now in evidence relative to discriminatory practices even prior to 1929. We didn't propose through live witnesses to go back and show exactly how every house was set up or the housing pattern developed prior to the time he came in.

Court: To make this sort of question competent, I think you just probably have to ask him for occasions he knew of that people had refused to buy, sell or rent to people of the Negro race. This is what you're talking about, isn't it?

Mr. Chambers: That's correct, Your Honor.

Court: If he knows of instances of that sort, why he can testify to that.

Q. Mr. Hennigan, do you know of any instances where Negroes have been denied the right to purchase houses in white or predominantly white areas in the City of Charlotte? A. I know of, yes, some instances where this has been true [54] I was not the collaborating broker, however, in instances where Negroes have actually gone to see houses and have offered to buy and did not have the opportunity to do so. I have had personal experience where Negroes—and I have been a part of three groups where we have sought to buy land that we could develop housing for our people or for all people and for various reasons even though signs have been on these properties, either the selling broker would come back and say either we have a contract or I'm sorry, the price has suddenly gone up, and in other instances the property was suddenly taken off the market and reappeared three and four months later.

Mr. Barkley: Your Honor, I move that answer be stricken out on the ground that it states no fact

Daniel O. Hennigan—for Plaintiffs—Direct

whatsoever that would tend to show any discrimination.

Court: Motion denied.

Q. Mr. Hennigan, let me ask this; have you followed the Charlotte News & Observer in its advertisement of housing in the City of Charlotte? A. I have.

Mr. Barkley: I object to that.

Court: Objection overruled.

Q. Have you followed the Charlotte News in its advertising of housing in the City of Charlotte? A. I have.

[55] Q. Prior to 1968, Mr. Hennigan, would you state whether they advertised housing for colored and housing for white? A. This has been the pattern of advertising as long as I can remember.

Mr. Barkley: Move that be stricken, the testimony what some third party has done.

Court: Motion denied.

Q. Now, Mr. Hennigan, would you tell us further some of the specific instances you know of where Negroes have been unable to purchase houses in white or predominantly white areas? A. I was involved, I was the broker in one instance where I had a house for sale in a white community and, of course, I had a purchaser. In this instance it was not a case of a non-cooperative owner, the owner was perfectly willing to sell the house to any qualified buyer. However, upon the submission of an application for a mortgage loan, the lending institution refused to get involved on the grounds that it might cause some reprisals on the part of

Daniel O. Hennigan—for Plaintiffs—Direct

their patronizing clientele if they should make a loan in this particular area.

Mr. Waggoner: Objection, motion to strike as to what the lending institution did, or reason it did the same.

Court: Motion denied.

Q. Go ahead, Mr. Hennigan. **A.** I think that completes that story and that was the end of that case. We, of course, could not find a lender that would make [56] a loan to this particular family in this particular instance. I had, of course, another experience where I had a house that was listed. Again, the owner had no compunctions about who bought the house. The house was for sale and the house was, of course, put on the market and was the next day bought off the market. The presumption was . . .

Mr. Waggoner: Objection.

Court: Don't tell us about presumptions. Tell us what you know.

A. All right. The house was bought off the market by a mortgage company who bought it in for a community organization that was formed in this particular community. There was an agreement when these homes were initially sold by this same mortgage company that developed the area with regard to the swimming pool. It was a covenant relationship whereby the initial owner had right to share and use the swimming pool but in the event that the property should be sold and should be sold to a client that was not desirable to this particular association, then the association had the right to buy the property back in, and the house was bought by this particular firm for this as-

Daniel O. Hennigan—for Plaintiffs—Direct

sociation, and subsequently sold to a white family.

Q. Are you familiar with the development of Double Oaks? A. I am.

Q. Now what section of Charlotte is that in, Mr. Hennigan? A. Double Oaks is just beyond the Greenville area to the north [57] of Oaklawn Avenue in the northwest section of the City of Charlotte.

Q. Is that presently occupied by Negroes or whites? A. Negroes.

Q. Was there built at the same time that Double Oaks was built an apartment project that is now occupied predominantly by whites? A. In what community, sir?

Q. In the section of Charlotte near Wilkinson Blvd. A. These two projects were built, according to my recollection, about the same time and the one on Wilkinson was for whites and the one called Double Oaks was for Negroes.

Q. Are you familiar with the development of Dalebrook? A. I am.

Q. Will you tell the Court approximately where that section is located in the City of Charlotte? A. Dalebrook is in the northwest section fronting on Newland Road, bound by I-85. Incidentally, I happen to live in that community.

Q. Would you tell the Court whether a similar white section was built in the City of Charlotte at the same time by the same developer? A. Yes, sir. There were several sub-divisions at the same time being built by the same developer and these were for white and the Dalebrook community was for Negroes.

[58] Q. Are you familiar with the development of University Park? A. I am.

Q. Would you tell the Court what section of town that is in? A. Northwest section of town. It's to the west of Beatties Ford Road. LaSalle Street and I-85 and Beatties

Daniel O. Hennigan—for Plaintiffs—Direct

Ford Road are the boundaries of this subdivision.

Q. Is that section or subdivision occupied by Negroes or whites? A. Negroes.

Q. Are you familiar with the development of Northwood Estates? A. I am.

Q. Would you tell the Court whether that section is occupied by Negroes or whites? A. It is occupied by Negroes. It's also in the northwest section beyond I-85. Prior to its development it was in the county, the Long Creek community. The developer was able to have it included as a part of the City of Charlotte and I'm sure it's the way it's classified currently. It is the only community outside of the city limits of Charlotte, so far as I know of, for Negroes that is incorporated as a part of the City of Charlotte.

Q. Let's indicate something on the map. Is this the area here, Northwood Estates?

Court: Is that north of I-85?

Mr. Chambers: North of I-85.

Court: And straddling Beatties Ford Road?

【59】 Mr. Chambers: Yes.

A. Northwood Estates fronts on Beatties Ford Road and runs west from Beatties Ford Road about a quarter of a mile or maybe half a mile from I-85 going north.

Q. Would this be the section commonly referred to as University Park? A. That's right.

Q. That's tract 46. A. I can't see the tract but from what you say and from what I can see from here, I didn't bring my glasses—I do have an impairment—that is it.

Q. Would this be the section commonly referred to as the Dalebrook section, tract 48? A. To the east of Newland Road, bounded by Newland and I-85.

Daniel O. Hennigan—for Plaintiffs—Direct

Q. That's correct! A. Yes.

Q. Mr. Hennigan, had Myers Park been developed at the time you came into the city? A. Yes. It was a developed community. However, it has developed some since that time. Dilworth was budding and the new community at the time I came.

Court: What did you say was the new community?

A. Dilworth.

Court: Dilworth is a much older community than Myers Park, isn't it, Mr. Hennigan?

[60] A. Both of them are old communities. When I say budding community, perhaps it was an expanding community at the time. I am not saying that Dilworth was beginning or a new community at that particular time, but Myers Park basically was developed and has not really developed substantially beyond the point that it was, I think, twenty-five or thirty years ago. However, the Dilworth community has had some substantial numbers of new homes built in that length of time.

Court: I think you've got it confused with business building but I don't think it matters here.

A. Well, of course, you know, we didn't really have much occasion to go into these communities unless we had a specific purpose there and that primarily would have been to perform some service. Most of what we knew is what we heard or read. So I could be in error on a lot of that.

Q. Mr. Hennigan, are you a member of the Charlotte Board of Realtors? A. I am.

Daniel O. Hennigan—for Plaintiffs—Direct

Q. How long have you been a member of that organization? A. About a year and a half. October a year ago I was admitted to the Board of Realtors.

Q. Will you tell the Court what the Charlotte Board of Realtors is? A. The Charlotte Board of Realtors is a trade organization composed of persons who are interested in the real estate industry [61] or those who are practicing real estate brokerage and who subscribe to a specific code of ethics.

Q. How many Negroes are members of that Board? A. One, and that's me.

Q. Would you tell the Court your experience in becoming a member of the Board of Realtors? A. I'll be glad to. I went into real estate in 1962. Of course, there is a required state examination.

Mr. Waggoner: If the Court please, it seems this is straying quite far from the inquiry we are about today.

Court: I agree with you. Can you give us any reason for pursuing this, Mr. Chambers?

Mr. Chambers: Yes, sir. We are trying to establish, Your Honor that there was not only private discrimination but institutional discrimination in the sale and rental housing and we think in this testimony we can point out some evidence to substantiate the institutional discrimination.

Court: Now let me see where we're going. How much of your evidence is addressed to this general area, that the present Charlotte school plan is defective because once upon a time and now people practice racial discrimination in the sale and renting of houses? How big a part of your case is this?

Colloquy

Mr. Chambers: We have three witnesses we propose to [62] call to testify about the discrimination in the sale and rental of houses.

Court: Let's try the lawsuit first and then get around to that. I don't think it matters at all for the purpose of the present community problem we're dealing with why people are living now where they are now living. I'll be glad to hear you put all that evidence in but it does not help me in coming to any conclusion nor the School Board as to what we ought to do here.

Mr. Chambers: May I request of the Court whether the Court will take judicial knowledge of that fact.

Court: I'll be glad to hear your testimony on whatever you want to offer. I might take judicial knowledge of more than you can competently prove. I'd like to get to the lawsuit first.

Mr. Chambers: Your Honor, we considered it an important part of the lawsuit. We think that a showing of this further compounds the illegality of the Board's utilizing boundary lines on the pattern. If the Court feels, however, that this evidence would not be necessary, we can, of course, forego that. We would request, however, permission to depose the witnesses that we have.

Court: Well, if you've got them here it's cheaper for everybody, especially your client and including the [63] rest of us, to take the testimony while they're here. But I'm just telling you I don't see where it helps or hurts. I might be more impressed by it if you said more about it in the complaint or motion.

Daniel O. Hennigan—for Plaintiffs—Direct

Mr. Chambers: We did refer in the motion, we thought, to the matter but perhaps not as clearly as we should have. We have, in fact, taken a lot for granted in the motion in terms of what the courts were now saying relative to utilization of boundary lines. We had assumed that this evidence would be some evidence that the Court would want to consider. Be that as it may, may we have a five minute recess and regroup our troops and move on to something else?

Court: Well, I'm not going to cut you off. If you want to make out a *prima facie* case on this theory, go head, but maybe under the circumstances that's the proper thing for you to do, but I think we're all far more interested in other phases of the case.

Mr. Chambers: Would the Court permit me to go ahead and finish with Mr. Hennigan and then go into something else?

Court: Sure.

Q. Now, Mr. Hennigan, would you go ahead and describe the problems you had in becoming a member of that Board?
A. Yes. After completing the state examination and, of course, [64] opening up my business I did apply for membership in the Board and I was told that I would have to have at least three years of experience and that I would have to have an office and it would have to meet certain prescribed conditions, and etc. At the end of the third year I applied again and, of course, was told that I was not eligible for membership in that the bylaws had been changed and I would have to attend the Realtors Institute and complete Course 1. I then, of course, applied for admission to the Realtors Institute and found there was an-

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nnigan—for Plaintiffs—Direct

guess which was that I had to have three
thirty I was not a member of the Board I
appeal y enroll in the Institute. After, I
I did four months and conversing with some
I we rent real estate brokers in this town
the e was or their consideration of this request,
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had I then was advised that my enrollment
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antamination would be given and that I
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gan, then take Course 2 [65] while I was
pa being offered the following week, in
if he some changes in bylaws by the time
I c te and I thought I'd get ahead of the
I t and take Course 2. My examination
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otl charlotte that Saturday afternoon and
Hi the three persons who had endorsed
co ne was out of the City and after a
w I did make an appointment with the
vi signed it and I went back to Chapel
and was admitted tentatively on the
hird person who was out of the city
pplication. On Wednesday I was ad-
person had sent them a telegram ex-

Daniel O. Hennigan—for Plaintiffs—Direct

pressing his desire to sign and that he would do so and so I did complete Course 2. I came back to Charlotte and then went back to apply for membership in the Board and, having completed Course 1 and 2 successfully, I was advised that I could not then enroll or make application unless I got a member of the Charlotte Board of Realtors to get the application form. I could not go to this office to the Board office and myself pick up a form and fill it out and submit it for consideration. I then talked to some, I guess, sixty persons, members of the Board, and all of these declined the invitation to go get an [66] application for me and I had an attorney who worked with me and used his influence to get some of them to do so. After this I wrote the Board a letter and asked the Board of Directors if they would give me an application as a whole, hence eliminating the necessity of some one person either putting himself out in this particular way, just to pick up a form and give it to me. The Board, of course, declined, indicating that this had not been done in the past and saw no reason to break with the tradition to do this for me. I believe some four or five months later some Negroes had raised a concern that no Negro had been admitted to the Board and I believe one such person is present in this room, and this was a meeting with the Board of Realtors and some other interested persons and this group was told that there was no Negro in the City of Charlotte that would qualify for membership in the Board and they then advised the Board that they understood that I was qualified. The following day I was asked to pursue the matter again to see if I couldn't get an application. It so happened that I happened to have been in a governmental office the following day and one of the persons who was a part of this group wanted to know why I had not been admitted.

Daniel O. Hennigan—for Plaintiffs—Direct

I recited the story I have just recited here and this governmental agency then turned to one of their real estate practitioners and asked if he was aware of this and in the meanwhile the conversation then ended, that this [67] Real Estate Board member agreed to use his influence to get an application for me. He picked the phone up in our presence and called the Board office and after an hour and a half of conversation by telephone he was advised that if he wanted to do this he would, of course, have to do it and suffer any consequences that may come. He assured the person at the other end of the line that he was willing to assume any responsibility for any of the consequences and if he would leave the application where he could pick it up, he would be down to get it. I got the application in that way and this same person said that he would sign it and he would use his influence to try to get another Board member to do so, and I went to the other Board member and indicated all that I had done in the pursuit of this and this person agreed to sign and then I finally got a third person. I had to have three. In addition to this I got some supplementary references from two banks and from two attorneys that I knew and had worked with down through the years who could attest to my character and this sort of thing. I believe about two months later, after a series of conferences, these conferences centered around the concern that the Board had because my application had registered interest in becoming a full member of the Board to include a member of multiple listing. I was advised that if I pursued this matter of multiple listing that I could do so but that it would go against me and that perhaps I could [68] be hurt seriously if I insisted on this.

Q. Would you tell the Court what multiple listing is?

Daniel O. Hennigan—for Plaintiffs—Direct

Mr. Waggoner: If Your Honor please, I'd like to move to strike the last answer. It's based on statements attributed to other people, suppositions, it's hypothetical. It has nothing to do with this lawsuit, it's irrelevant.

Court: I think so, too. Motion denied.

A. Multiple listing is a separate organization of the Board and—

Court: You'll have to admit it's a good story, though.

A. And so is the Charlotte Board of Rental Agencies. These are sub-corporations of the overall corporation. You do have to be a member of the Board before you can become a member of multiple listings. Multiple listing is where all of the brokers who are members of multiple listing pool listings and any member has the right to show any home that has been listed and registered with the multiple listing agency. There is a key, for example, if I were a member of the multiple listing I would have a key and in the event that the house was empty I would not have to say to anybody when I wanted to go see the house or who I was bringing to see it. However, there is a code of ethics and matter of courtesy. If the home is occupied, naturally the brokers work together and in the interest of the owner the appointments are normally made through the listing broker. But all have the right to show [69] it and all have the right to sell it. The agreement is that the commission—and this is how we make our money in this field—the commission is split between the listing broker and the selling broker.

Q. Mr. Hennigan, if you were a member of multiple listing with the Board, you would have the opportunity, would

Daniel O. Hennigan—for Plaintiffs—Direct

you not, to show Negroes homes in white areas that might be listed in multiple listing? A. I'd have the opportunity to show anybody a home anywhere in the City of Charlotte if it's listed in multiple listing and I would have the opportunity to take a Negro and to show a home in a white community if I were a member of multiple listing.

Court: You are not now a member of the multiple listing?

A. I am not. We entered into an agreement, sir. I consented that perhaps what they were saying might be real true and, being young in the field and being in an area all alone, I did not see I had much opportunity to wage a battle with this strong body, but I did insist that, well, there is a fee that we have to pay. Currently it's \$1,200.00 to become a member and, of course, you have to be approved by the multiple listing committee and I did ask for the privilege of knowing and the privilege of joining prior to any subsequent changes in the rules or in the governing documents governing this [70] particular agency. Primarily if any increase in multiple listing enrollment should occur, I wanted the right to do this and then I also asked for the right to work and I asked the Board of Directors to use their influence among any brokers in the City of Charlotte who happened to be broadminded enough and willing to work with a Negro and I insisted that I did not particularly care for a working relationship or to force a working relationship on any who did not care to work with me. The Board agreed to use their influence to do this and also agreed to give me the privilege to join prior to any subsequent changes in the multiple listing bylaws.

Daniel O. Hennigan—for Plaintiffs—Direct

Mr. Chambers: Your Honor, I'd like to mark as Plaintiff's Exhibit 32—

Mr. Barkley: I don't believe we've gotten him on the Board yet, Mr. Chambers.

A. I'm sorry, yes, you're right. After these conferences and these agreements then, of course, I was admitted to the Board membership, October a year ago. Of course, from the time I first pursued this until the time I got in was three and a half to four years.

Court: Are you selling any more houses?

A. I have not had the cooperation I anticipated. I do have some real friends, I think, at least I hope I have, but we have not been able to get down to a working relationship. I am not sure I can say just what the character of the relationship [71] is except we are good friends. We eat together, have dinner occasionally and I am on one committee that meets about twice a year and this has been the extent of my participation thus far.

Q. I show you a document marked Plaintiff's Exhibit 33 and ask you if you will state what this is. **A.** This is the Code of Ethics and this is published by the National Association of Real Estate Board.

Mr. Barkley: We object to that.

Mr. Waggoner: Could we take a look at this before he reads from it?

Court: Certainly.

Q. Would you state whether or not as a member of the Charlotte Board of Realtors you are governed by that Code of Ethics?

Daniel O. Hennigan—for Plaintiffs—Direct

Mr. Barkley: Objection.

A. I am, yes.

Mr. Barkley: That's another third party's interest. I don't see how it's got any business in this court . . . without someone competent to identify it.

Court: He said it's a copy of the regulations under which his trade organization operates and to which he subscribes. Isn't that what he said?

Mr. Barkley: Approximately, but I wonder if I would be competent to sit on the witness stand to testify to the Code of Ethics of the American Bar Association.

【72】 Court: I think you would, Mr. Barkley, as well as anybody I know.

Mr. Barkley: Well, I'll try that on Your Honor some day.

Q. I will show you another document marked Plaintiff's Exhibit 34 and ask you to state what that is. A. This is a circular that, of course, came to all members of the Board of Realtors. The date is March 8, 1968, and I did receive a copy of this and it has to do with the concern for the legislature to abolish the practice of allowing real estate brokers to list properties honoring the prerogative of the owner to say to whom this house may be sold and to whom it may not be sold.

Q. Was that sent out by—

Court: Now, what you said probably made good English but I got lost in it. That circular is in favor of—

Daniel O. Hennigan—for Plaintiffs—Direct

A. To have the option to say this. As perhaps most you know, the Real Estate Board nationally objected to the recent legislature which made it unlawful for an owner to restrict in his listing agreement to whom the house may be sold and this has been one of the practices, I think nationally and certainly here in Charlotte, if an owner listed property with a real estate agent, the owner had the right to say it may be sold to whites and not to Negroes and many of these listings were accepted under this arrangement. Of course, when this [73] open housing legislation came up, then of course the real estate industry nationally was a lobbying agency against the enactment of open housing legislation. This circular, of course, came from our Board. I received a copy of it and have one in my file, asking that we use our support to write our legislators and ask them to vote against this particular bill and that the inherent right of the owner should be supported and that this should be a continuing practice.

Q. I show you a document marked Plaintiff's Exhibit 35 and if that is a circular also from the Charlotte Board of Realtors. A. This is.

Q. Did you receive such a document in the mail? A. I did.

Q. As a member of the Board of Realtors? A. That's right. Might I say this, I don't know what the record would indicate but I did respond to this circular and I wrote to our Congressmen and I did ask them to use their influence to support the bill and I think at one of our meetings it was indicated that perhaps I was the only Board member that did this.

Court: What is the date of that circular?

A. March 25, 1968.

Daniel O. Hennigan—for Plaintiffs—Direct

Court: What did they ask you to do?

A. This comes from the Board of Realtors and Home Builders Association of Charlotte. The subject is: Forced Housing. [74] It indicates that the Directors of the Board of Realtors and the Directors of the Home Builders Association hereby reassert their support of the principle of equal opportunity in the acquisition or employment of real property . . . enjoyment, rather, of real property, and the right of individuals to determine the disposition of that property, and of course it goes on to say how they feel about it and they also indicate on this letter that the forced housing measure is supposed to remove discrimination in housing and, of course, the contention at that time was that they were taking the right away from the owner and giving it to a minority group and to take one right and to give it to another was discriminatory. This is the essence of this letter.

Q. Mr. Hennigan, the section of the Code of Ethics that dealt with the right of the owner to direct how his property should be sold or rented is what section? A. This is Part 2, Article 2, and the heading is Relationship to Client, and of course this is the article that, according to the Code of Ethics, gave to the real estate broker the real tie with an owner and indicated that his first responsibility, of course, was to the owner or the person who lists property with him and his rights should be protected above all else and that this was the moral responsibility of the realtor, to uphold and protect the private interests of the owner of the property, and of course this is the article that primarily [75] gave to the realtor the strength in his claim that the right of the owner was, of course, inherent and that he then as an agent for the owner should have his first

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loyalty to the owner and the request of the owner. So then the owner had the right when the property was listed with a broker to spell out how this property would be disposed of and realtor, then, of course, was bound contractually to an agreement with this owner in terms of a listing agreement.

Q. Would one be in violation of the Code of Ethics as a real estate agent if one sought to sell a house to a person of a race other than the one indicated by the owner? A. Today that is true. This, of course, in our national association and in our state association last September all of this, of course, has been legally clarified. The real estate industry has been advised that it is no longer constitutional for this to be done and any broker now listing property is in violation to list it indicating that it must be sold to a white or to a Negro or to some other ethnic group. So the listing agreements today do not carry along with it these built-in prerequisites that the owner has spelled out.

Q. You have had an opportunity to look at Plaintiff's Exhibit 4, which is this overlay here, indicating the racial composition of the census tracts of the City of Charlotte and the County of Mecklenburg, have you not? A. I have.

【76】 Q. You've also had an opportunity to observe the various neighborhoods in the City of Charlotte—

Mr. Barkley: I object to his leading now.

Court: That's the poorest objection you made yet, Mr. Barkley. That's the only one you made that hasn't bothered me.

Q. Have you, Mr. Hennigan, had an opportunity to observe the various racial housing situations in Charlotte? A. Yes, I have.

Paul R. Leonard—for Plaintiffs—Direct

Q. In other words, you know where the blacks stay and where the whites stay generally? A. Yes, I do.

Q. In your opinion does this map, overlay Exhibit 4, fairly and accurately depict where the blacks and whites stay in the City of Charlotte and County of Mecklenburg? A. It is a fair and relatively accurate picture of the housing situation today in the City of Charlotte.

Mr. Chambers: Your witness.

Mr. Waggoner: We have no questions.

Mr. Barkley: We move all the testimony be stricken out.

Court: The motion is denied but, although tremendously interesting, I'm still not sure it helps me to decide the case. Motion is denied.

Mr. Chambers: Thank you very much, Mr. Hennigan. May I approach the bench with opposing counsel?

【77】 Court: Yes, sir.

(Conference is had out of the hearing of the Court Reporter.)

SHORT RECESS

PAUL R. LEONARD, a witness for the plaintiffs, having first been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Chambers:

Q. State your name, please. A. Paul R. Leonard.

Q. What is your occupation? A. I am a Minister, ordained Presbyterian Minister.

Q. How long have you been a resident of Charlotte? A. Since June of 1964.

Paul R. Leonard—for Plaintiffs—Direct

Q. Have you had occasion, Rev. Leonard, to study the housing patterns and practices in the City of Charlotte?

A. Yes, I have.

Q. What has been your occasion to make that study? A. I made it in relation to a class in Urban Sociology that I was taking at the University of North Carolina at Charlotte and I chose the topic of Housing Patterns in Charlotte because of my relationship to the Charlotte Fair Housing Association as its President.

Q. What is the Charlotte Fair Housing Association? A. This is a voluntary association of a membership of about [78] sixty-five citizens that was formed in February of 1968 to work for an end to discrimination in the sale and rental of housing in Charlotte and Mecklenburg County.

Q. Under whom were you studying at the time that you did this paper? A. Dr. Barbara Goodnight.

Q. And would you tell the Court how you proceeded with your studies?

Court: Was that here or in Chapel Hill?

A. It was here. From work with the Fair Housing Association we had compiled by the help of the Redevelopment Commission, primarily depending upon them, we had compiled a map, drawn up a map which showed the racial patterns in housing as they existed in Charlotte in the summer of 1968. My main attempt in the paper was to see what changes had taken place and how fast over the last eight years. I had really wanted to go back further than 1960 but the census material prior to 1960 was not broken down by tracts as it is now and as it was in 1960. So the paper was primarily an attempt to compare what had happened in Charlotte in the last eight years and to ask the

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question of why, what were the factors involved in the changing neighborhoods and in the racial patterns as they existed.

Q. In your work did you use census figures? A. I used census material; I used a good bit of material furnished by the Charlotte-Mecklenburg Planning Commission, one [79] report in particular. I can't quite remember the title but I think it was entitled Blight September 1962, and this report the Planning Commission had, by census tract, broken the census tracts into blocks, indicated which areas of the city were occupied by blacks and which areas were occupied by whites. So it became a relatively simple matter to use this as a basis of comparison with the present racial patterns.

Q. Did you consider any data supplied you by the Re-development Commission of the City of Charlotte? A. Yes, I did. I considered this in relation to the question of what had happened in those eight years.

Q. Did you consider any data supplied you by the Charlotte Public Housing Authority? A. Yes, primarily data concerning the existing housing projects and those that were planned and the racial makeup.

Q. Did you reach any conclusions? A. Yes. The major conclusion was that Charlotte is rapidly dividing . . .

Mr. Waggoner: Your Honor, we object to his giving a conclusion which is in effect an opinion. He is not qualified as an expert.

Court: Well, without couching it in terms of conclusions or estimates, tell us what you observed about the housing patterns or situations of last summer compared [80] with whatever the other time was you started with.

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A. Yes, sir. I observed that the city was divided and rapidly the division was increasing between blacks and whites living . . . with whites living in the east and blacks predominantly in the west and kind of taking a line from North Tryon to the Plaza to Independence Blvd., coming south on the map following those streets I found that, according to my figures, 96% of the Negro population in Charlotte lived west of that line. There appeared to be to me, if you consider the areas that were in transition, only one area in the west that still remained predominantly white and where transition had not taken place. So I found the city divided and the division increasing.

Q. Did you have an opportunity to see any data from the Redevelopment Commission of the City of Charlotte relative to relocation of families from the urban renewal areas? A. Yes, I did.

Q. I show you an exhibit marked Plaintiff's Exhibit 14 and ask if you had a chance to see that document. A. Yes.

Q. Does that document show that families in the redevelopment areas involved have been relocated in primarily Negro areas?

Mr. Barkley: He's telling us what some other document says. Wouldn't that document be the best evidence of that?

【81】 Court: It would, but if it shows that and enables me to put a label on that document while he's going at it—

A. I found that more than 50% of the families had been moved into areas which, according to the 1960 census, were high density black.

Court: What percentage?

Paul R. Leonard—for Plaintiffs—Direct

A. 50%, and the others had been moved into areas that since 1960 had changed from predominantly white areas of residence to high density black today.

Q. You referred to a document that you used in your study a moment ago called Residential Blight. Is this a copy of the document you referred to? A. Yes, it is.

Q. And that's Plaintiff's Exhibit 15. A. Yes.

Q. Did you observe anything else relative to the public housing in the City of Charlotte? A. As I began to try to answer the question of why the racial patterns existed as they did, in looking at the makeup of the public housing racially and in a conversation with Mr. Cock, who is the assistant to Mr. Dillehay, he indicated that approximately 95% of the occupants of public housing were Negroes.

Mr. Barkley: Move to strike Mr. Cock's testimony.

Court: That testimony is technically incompetent. The [82] motion is sustained. Have you got some other way of proving those figures, whatever they are.

Q. Were you given any figures, statistics, Rev. Leonard, about the occupation of public housing racially?

Court: Consistent with my ruling, he can't testify what those figures are? Have you got them in some official publication?

Mr. Chambers: We'll have them in the morning, Your Honor. The Public Housing Authority is giving them to us this afternoon.

Court: This is a valid objection he's making and I guess I ought to sustain it as to competency of the witness to testify about what he's saying.

Mr. Chambers: That's correct.

Paul R. Leonard—for Plaintiffs—Cross

Q. Rev. Leonard, I show you a document which has been marked as Plaintiff's Exhibit 36 and ask if you will state what that document is. A. This document is a mimeographed copy of the paper I did on the housing pattern in Charlotte.

Mr. Chambers: We have no further questions.

Court: You can review that if you wish and make objection to it later. The use I would make of such a study is simply as a convenient way of having collected whatever the figures are on which he's making his conclusions. You can make your objection now and I'll rule [83] on it after I read it and find out what parts of it are really incompetent and what parts are not.

Mr. Waggoner: We noted a difference in the exhibit we have and the one introduced and by agreement of counsel we are going to substitute our Page 3 in the official exhibit.

Court: All right. 36 is the one you're talking about?

Mr. Chambers: 14, Your Honor, the list showing the relocation of families in urban renewal. We have to duplicate his copy of Page 3 and insert that in the morning.

Court: Take it away now so we can be sure we've got it right in the morning.

Mr. Chambers: All right.

Cross Examination:

Q. With reference to your study on housing patterns, did you pay any particular attention to school districts as such? A. No, I didn't. In one particular instance involved

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in the paper which I reported about, this was concerning the Barringer Woods elementary school where there had been a rapid turnover of population from white to black in the year 1967-68 and, as President of the Fair Housing Association, I was involved in two community meetings in the Barringer Woods community prior to the opening of school in September of 1968 in which one black family had moved into the neighborhood and the [84] residents were coming together to ask what shall we do. In the meetings prior to the opening of the school they were pretty much in agreement to stay and not flee. They had been approached by realtors indicating that blacks would be moving in and their property values would be going down, but the day school opened the racial balance in Barringer Woods school had shifted because of the change in the other community from a predominantly white school to where there were now, according to the people, 75% black. And the—

Q. With reference to the Barringer—

Mr. Chambers: Your Honor, we request that the witness be permitted to finish his answer.

Court: Finish the rest of that statement.

A. And the day the school opened seven more houses went up for sale.

Q. Barringer Woods is a subdivision in itself, is it not?
A. Yes, fifty-six homes, right.

Q. Are there any other subdivisions in that school district? A. I don't know the makeup of that district. I think that the children from Clanton Park, which is the area that had gone from all white to black, I feel the children from this must be filtering into the Barringer Woods school. I don't know.

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Q. Are you familiar with Rolling Wood? A. Are you talking about the school?

Q. No, Rolling Wood subdivision. [85] A. Yes, next to Clanton Park.

Q. All of these areas were all white within the past several years, were they not? A. That's correct.

Q. And now they are practically all black, is that correct? A. Right.

Q. The white people sold their homes to the colored people, is that right? A. Yes.

Q. Your study was based primarily on the census tracts as we see them on the overlay, is that correct? A. That's right.

Court: Have you talked to any members of the School Board about these problems that you were studying?

A. I have on occasion talked to one, yes, sir.

Q. Who was the one School Board member you talked to? A. Mrs. Kelley.

Mr. Waggoner: I have no further questions.

Mr. Chambers: I have nothing further. Rev. Leonard has indicated he would like to be excused unless the defendant needs him.

Mr. Waggoner: We have no objection.

Court: Thank you, Mr. Leonard.

Dr. William C. Self—for Defendant—Direct

【352】 * * *

DR. WILLIAM C. SELF, a witness for the defendant, having first been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Waggoner:

Q. Would you state your name and residence address, please? A. William C. Self, 6137 Devern Drive.

Q. What is your official position with the Board of Education? A. I am Superintendent.

Q. Dr. Self, what is your training in the field of education? A. I had my undergraduate degree at Catawba College; Masters Degree and Doctorate at the University of North Carolina at Chapel Hill.

Q. What is your educational experience from a work standpoint? A. I was a teacher and assistant principal, a principal in the elementary field at Winston-Salem; I moved from the principalship to Directorship in Instruction in the central office capacity; I was Assistant Superintendent in Instruction in Winston-Salem City Schools; moved to Charlotte as the 【353】 Associate Superintendent prior to becoming Superintendent. This is the second year.

Q. Dr. Self, what is the size of the staff at the Board offices at the present time? A. In terms of the professional staff I think the number is 3558 teachers.

Court: Are there any exhibits that have these figures in them?

A. I can furnish a fact sheet which has these figures in it. I have only one copy right at the moment. I mentioned the teaching staff, 3553 is the exact figure. To this you add 404 other members of the staff. You begin to get into the non-professional people, the clerical, cafeteria, custodial, maintenance, transportation, television station, and

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the grand total would be slightly in excess of 5800 employees total.

Q. Dr. Self, how does this compare with other employers in the school district? A. I understand that the Charlotte-Mecklenburg School System is the largest employer in the County.

Q. With reference to the dimensions of the school district, have they always been the entire County of Mecklenburg? A. No. They have this size since 1960, the year of the consolidation of the two existing school systems. That was the Mecklenburg County System and the Charlotte City System.

【354】 Q. Were these two systems autonomous of each other? A. Yes, they were.

Q. As I understand it, you came here in 1962, is that correct? A. That's correct.

Q. Were there any problems that flowed from the merger of the two systems? A. Yes, very definitely.

Q. Has this been a time consuming problem that your staff has had to meet through the years? A. Yes.

Q. With reference to the composition of the City system of schools as against the County system of schools—

Court: Are you going to leave it right there? You say the merger created a lot of problems and I just wondered what they were.

Mr. Waggoner: Judge, I don't want to stir up some things that have been buried. I wanted to show the Board has been occupied.

Court: Go ahead.

Q. With reference to the racial composition of the City at the time of the merger as against racial composition of the County, do you have an opinion as to whether there were more whites percentagewise in the County than in

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the City! A. I have no facts to go on. I do understand that the changing ratio of Negro to white was one of the factors that entered [355] into the deliberations about consolidation.

Q. Has this merger of the two systems facilitated integration of the student population?

Mr. Chambers: Isn't that a conclusion of law?

Court: Is that an objection?

Mr. Chambers: Objection.

Court: Overruled.

A. Would you repeat the question?

Q. Has the fact of merger of the two school systems facilitated the integration of the student population in the schools? A. I think I would answer that in the affirmative because it relieved the problem I referred to previously, at least it made it a problem of the entire county, and it also solved the problem of the tax base, the diminished tax base behind the pupils that resided in the Mecklenburg County School System.

Court: Now you're beginning to make me think it was a pretty good idea after all.

Q. With reference to the size of the present school system, do you know the approximate number of square miles in the system? A. Yes. The county is right at 550 square miles, I believe.

Q. How far is it from north to south, do you know? A. The length is approximately 35 miles and width about 23 miles.

Q. Do you have some general facts about the educational system that we have in this county that you can give to the Court? [356] A. Do I have—again, please.

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Q. As I understand it, your office has distributive information sheets about the public school system and this is what I have reference to. Could you tell the Court some of the major points that may be of interest with reference to this system?

Court: Have you got that information sheet with you?

A. Yes. Are you referring to this paper, Facts about the Charlotte-Mecklenburg Schools?

Q. Yes.

Court: Let me look at that. Can I just get Mrs. Wentz to duplicate this and let you render any objection to it that you want to?

Mr. Chambers: That would be fine.

Court: It will save me taking notes. Go ahead, Dr. Self.

A. I really think what Mr. Waggoner was getting at was some indication of the size of the school system once again. If that's not what he wished, he can ask subsequent questions to get at it. The consolidation of the Mecklenburg County System and the Charlotte City System was the consolidation of the #1 and #2 systems in the State and, of course, when you combine two large school systems, as they were, you get a mammoth school system which is what we have today. At the time of the consolidation I understand that the student enrollment was right at 58,000. That was in 1960. Our size today is [357] 83,000, which indicates a prodigious growth over a relatively short period of time. There have been years when the pupil population increased by 3600 pupils. The low point in the terms of our increase

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was 2000. At the present time we feel that the pace of increase in terms of our pupil enrollment has slackened off slightly and we will probably be a school system increasing by about 2500 pupils per year from this point on.

Court: Is that about 100 classrooms a year or 90?

A. If we take 2500 pupils and if we figured arbitrarily on 25 per classroom for ease of division, you'd get your 100 classrooms. We are not fortunate enough to have that 25 pupils per classroom so you would assume that's 85 or 90 classrooms that would be required. This growth has produced some terrific problems for us in terms of being able to house youngsters. At the same time that we have tried to gear construction programs to meet the increased enrollment, we have been faced with the problems of trying to update facilities that went through the war years with very little money spent on them and with very little maintenance. So it has presented something of a problem for the Board of Education to deal with.

Q. With reference to the School Board which administers this district, how are the Board members selected? A. They are selected by an election process, bi-partisan [358] election. It occurs every two years and three of the nine members of the Board of Education are elected every two years.

Q. Have you had any vacancies created by moving from the County or any other reasons on the Board of Education in the past two years? A. Yes, sir. We had a resignation by reason of a move out of the City on the part of Mr. Tom Braden.

Q. Did the Board of Education appoint someone in his place? A. Yes.

Q. What is his name? A. Rev. Coleman Carey.

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Q. Will you state whether or not he is a Negro? A. Yes, he is.

Q. Has he been a candidate for the School Board in prior years? A. Yes.

Q. With reference to an elementary school, what procedure does the Board follow in deciding, or what does it do to reach the point of construction of a new school? What facts give rise to the location and selection of this particular location? A. Well, I'm sure that our studies would have revealed that this elementary school that you're talking about would have encountered housing problems for a number of years, its enrollment would have exceeded its rated capacity, and the excess of youngsters would be accommodated in existing facilities through the use of what we have called sub-standard spaces. [359] These may be basement classrooms, a classroom on a stage in an auditorium, partitioning of a larger classroom into two sections, things of this nature. In other words, there would be crowding within the elementary school. In all likelihood the neighboring schools would also be crowded. This would reflect a general tendency within the neighborhood of inability to house the youngsters in the neighborhood in the existing facilities. In all probability we would reach the point where mobile units would need to be brought into play to house the youngsters of these schools. I would have hoped that in the earliest stages we would have recognized the problem and might have acquired a site, at least, before homes were built on it, so that we would have a site available for that school. We have in the past employed architects to draw up plans and develop them to the stage of working drawings so that the moment the money becomes available we can build a school in that area. We eventually will reach the point where we must have a new facility and then we put that school down

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on that particular site. We are not able to afford the luxury of overbuilding which will mean that it is quite likely that everyone of the classes would be filled the first year. As a matter of fact, it is not an infrequent occurrence that a new school may have a mobile unit. As the elementary school nears completion, Mr. John Phillips, who is the Assistant Superintendent for Elementary Education, will have called in [360] to conference the principals of these surrounding schools and enlisted their aid and the aid of the principal of the new school, too, if we are fortunate enough to have appointed him, and ask these people to join him in designating the attendance area that will be served by this school. The starting point in their deliberations will be the capacity, the number of pupils that that school will house, and in essence their problem is to carve out of the surrounding school areas enough territory to give us the required number of pupils so that that school may open at capacity when it's ready.

Q. Now, these principals make recommendations to the Assistant Superintendent in charge of that? A. Yes, they do. They are encouraged also to discuss this matter with the School Committees—there is a School Committee at every school—so that there will be communication with the lay public regarding the location of these attendance lines.

Q. Now, the final act of establishing the school lines is performed by whom? A. By the Board of Education.

Q. Is this on your recommendation? A. Yes, it is.

Q. With reference to Independence High School how did it become located at its particular location? Could you give us the history of that? [361] A. Of course, the problems of overcrowding that I spoke of appeared in the neighboring high schools, Garringer and East Mecklenburg. A site was selected. We used principles of triangulation in terms of

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selecting sites with a school located at each of the angles in the triangle. A piece of property was located by a real estate consultant employed by the Board of Education and negotiations were entered into to acquire the property. That deal was consummated, the property was available, the Board elected an architect and the school was built.

Court: Where is Independence High?

A. Independence High School is in the eastern section. It is off Wilson Grove Road.

Court: Wilgrove?

A. Wilgrove, I beg your pardon.

Q. Dr. Self, would you come to the large map and point that out, please. (The witness does so.)

Court: I believe that's off your map, Mr. Waggoner.

Mr. Waggoner: My map is a little dated.

Court: Is that between Central Avenue and Independence or is it above Central Avenue? It's south of Albemarle Road, isn't it?

(Conference is had out of the hearing of the Court Reporter.)

Q. Dr. Self, did the School Board own property adjacent to York Road Junior High for the purpose of constructing a high school nearby? [362] A. Yes, sir.

Q. Has a high school been constructed over in that site? A. No, it has not.

Q. What action was taken with reference to that project? A. The Board of Education had employed an architect and

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the architect had developed plans up to a particular point. The Board decided that to locate the school there would be to assure that it would be totally black from then on. They abandoned the plans, instructed the architect to alter his work, acquired a site, which we now know as the Olympic site, and built the school in that area.

Q. For the purpose of the record, what area is Olympic located in? A. Southwest section, off Sandy Porter Road.

Q. Now, with reference to Randolph Junior High School, could you tell us the considerations that went into the location of that school? A. The same pattern was repeated here. There was a site available and we referred to it commonly as the Mason Wallace Junior property. It was located off Billingsly Road. Again the same factor entered into the decision of the Board of Education. That site was abandoned and another site was acquired. This was the Wagner property off of McAlway Road and Randolph Junior High School was constructed there.

Court: Is that to the south of McAlway?

【363】 A. It's actually to the east, where McAlway meets—I'm sorry, the name of the other road escapes me.

Q. Dr. Self, what kind of school population does Randolph Junior High serve? A. An integrated student population. Also one that I would judge varies in socio-economic level.

Q. What action, if any, did your office take with reference to freedom of choice at that school? A. Probably you are referring to the section of the Pupil Assignment Plan which prohibits transfers out of a newly established school. The reason for that, of course, is that the Board of Education has felt that there ought not to be freedom of transfer that first year, that the school ought to have an opportunity to

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establish itself. In this particular circumstance pressure was brought to bear to try to get the Board of Education to relax this particular policy. They did stand firm on it and the policy helped.

Q. With reference to Olympic, was the same rule enforced there? A. Yes.

Q. Is this also an integrated school? A. Yes, it is.

Q. With reference to the pupil assignment policy of the Board, have there been any changes in the operation of this policy since 1965? A. Yes.

【364】 Q. In what way? A. It's quite difficult. Could I use an exhibit to explain it?

Q. Certainly.

Mr. Waggoner: We have a document entitled Charlotte-Mecklenburg Elementary Schools 1968-69 and we'd like it marked Defendant's Exhibit #1.

A. Mr. Waggoner, do you have the junior high and senior high document to go along with that?

Q. This is just the elementary. A. There is another group that was with it.

Q. I don't seem to have the senior high. A. It's stapled to the junior high.

Mr. Waggoner: Your Honor, we would offer the junior high and senior high as a composite part of Exhibit 1 for identification.

Q. Dr. Self, would you first tell the Court what Defendant's Exhibit for identification #1 is? A. In the first place, the title is quite misleading. It just says Charlotte-Mecklenburg Elementary Schools. What it is is an administrative work sheet which was used in making the recommenda-

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tion to the Board of Education regarding the capacity of schools.

Court: Do you have a copy of high and junior high.

Mr. Waggoner: Yes, sir, I'm sorry.

Q. Dr. Self, if you will, identify Defendant's Exhibit for [365] identification #1. A. It's headed Charlotte-Mecklenburg Elementary Schools. As I said, the title tells you nothing and I had sought to elaborate upon it by saying that this is a work sheet that was used by the administration in making a recommendation to the Board of Education preliminarily to their setting the capacities of all of our schools. Capacity, of course, is directly related to pupil assignment and to freedom of choice because the only thing that determines whether or not a request for change of transfer is granted is whether the receiving school has space to accommodate these youngsters. It stands to reason that if you have a school capacity that is set on rather generous terms that you have a more liberal freedom of choice. With that in mind, I think we can get the gist of the paper by looking across the column headings. The name of the school is in the first column, of course; the total teaching spaces is next. That's an actual count of the number of classrooms. In this case at Albemarle Road Elementary there were sixteen classrooms. We next multiply that number of classrooms, 16, by 28, 28 being the approximate average for the elementary school grades of the system. That gives us a rated capacity for Albemarle Road Elementary of 448 students. We are not always able to have 28 per classroom. Depending upon our [366] fortunes with the General Assembly, we have gone to 30

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and up. So we next get the figure in the third column, maximum capacity, by multiplying the 16 teaching spaces by 30. That would run the housing capacity of the school up to 480. We next take a look at the projected enrollment for the entire school system, Elementary, junior and senior high school youngsters, and we find that the projected enrollment invariably will exceed our rated capacity. We try to determine the percentage by which the anticipated enrollment exceeds our housing capacity and we use that percentage to multiply the maximum capacity to get an adjusted maximum capacity for the school. In this case Albemarle Road Elementary adjusted maximum capacity is 518. This is the figure which is used in terms of making a final judgment as to whether or not Albemarle Road can receive transfers by freedom of choice and the judgment is made by comparing that 518 by the projected enrollment, 431. You would judge from this that Albemarle Road can receive transfers. If you look on down to the third school, Allenbrook, the same computation gives you 518 as a maximum adjusted capacity and the projected enrollment is 530. This is in the spring of the year. If the projected enrollment exceeds the maximum capacity, we close the school immediately and will accept no pupils in there by way of transfer.

Q. It's closed to transfers is what closed means here.
A. Right. The process which I have just described closed 32 [367] schools last year to freedom of choice. The reason I said there has been a change is that this computation was not done in a similar way in previous years. Let me tell you how it varied. In the first place, the teaching spaces included any sub-standard facilities like partitioned classrooms, mobile units, and the like, so it in effect inflated the number of teaching spaces. Then when you get over

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to the fourth column instead of comparing the projected enrollment with the maximum capacity, we looked at the number of pupils that were actually assigned and compared it with the maximum capacity and if it did not exceed the maximum capacity we permitted transfers. Of course, the flaw in this is that the number of pupils assigned in the spring does not allow for that increase in your student population that you're sure to get during the summer months. The projected enrollment is always a larger figure than would be the number of pupils assigned. So the net difference between the operation in 67-68 and 68-69 was to close more schools to freedom of transfer. The figure in the first year was 10 schools and the figure for 68-69 was 32; 19 elementary, 10 junior high and 3 senior high.

Q. Dr. Self, where are most of these closed schools located or a reasonable percentage of them? A. I think that you'd find that the majority of them are in the white neighborhoods. The word "closed" in the righthand column indicates the exact schools that were closed, Allenbrook, [368] Ashley Park, Bain, and so forth.

Q. Was there any particular concentration of closed schools? A. I think that the majority of them were at the junior high school level.

Q. Has the Pupil Assignment Act been administered without discrimination on account of race? A. Yes, it has.

Mr. Chambers: Objection.

Court: Yes, that's a legal conclusion that has to be drawn from the evidence. Objection sustained.

Q. Dr. Self, has freedom of choice to your knowledge, or the Pupil Assignment Act permitted substantially wholesale transfers of students from one school to another?

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A. That might have been the case before the tightening up process on freedom of choice. I do not think that is the case now.

Court: What is the number of the exhibit that has a listing in it of the assignments or transfers that were requested in various years, 66, 67, 68?

Mr. Chambers: Table 7 in the interrogatory, Exhibit 1; Table 7 in Exhibit #2.

Court: Dr. Self, let me ask the question about the accumulative effects of some of this. I'm looking at the table that shows 66, 67 and 68 for assignment and, for example, take Berryhill, which is about the eighth or ninth one down from the top. It shows that in '66 [369] there were 212 requests for transfers, in '67, 43; and in '68, 45. Are the requests listed for the later year duplicates of previous years or are they accumulative, in addition to those of previous years?

A. I believe they would be in addition to, Your Honor.

Court: Derita, for example, you have requests for those three years totaling 64 and those also are accumulative, I take it.

A. Yes, sir, they would be.

Court: Do you have data available from which you can determine how many school children of particular ages live within particular districts? By districts I mean the area served by a particular school.

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A. I could tell you what we do have. I noticed that Your Honor was examining the grid system that is on the map. This is a school system device for locating children. We work with the various utility companies planning department in developing it. What it was was the basis for computerizing the pupil census. The county was laid out, as you see by the map, in these grid sections. There is a heavy larger grid and the larger grid is divided into four smaller grids. Each one of four small grids is a 2500 foot square. So that if you think of the larger grid you have slightly less than one mile, 5000 feet instead of 5280.

Court: On that map there it's two miles.

【370】 Q. Dr. Self, would you come down to the map and demonstrate the grid you're talking about.

Court: Are you telling me that you do not have figures which develop the number of children in a particular school zone?

A. We do have figures but this was to give us a map code. Our school secretaries will take the address of each child and will code it according to the grid on the map. They can tell that the child lives in census tract 19, square #208, subsection A, and this of course is all computerized and the information can be regurgitated from the computer so that we can then go to our map and say in this one particular 2500 foot square there live 100 children. Of these 100 children so many of them are first grade, so many 2nd and 3rd and so on. We are able also to tell how many of those first grade children are white and how many are Negro.

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Q. Dr. Self, do the mobile units that are utilized by the school system furnish an educational need? A. Yes, they do.

Q. Would you tell in what way you use these mobile units? A. Well, we accommodate problems of crowding. The most visible evidence of this, I think, is present at a school where you find a large number of mobile units clustered. Had we looked at McClintock Junior High School last year you would have found 17 mobile units. These mobile units were housing the [371] children who ultimately were assigned to Randolph Junior High School. They were housed there until their school was completed. The same situation was repeated at Lansdowne Elementary School—I think we had about 15 there—housing the children until the completion of the Old Providence School. As we get more and more in our construction program and deal with renovations of facilities instead of replacements or instead of additional classrooms, you will probably find the mobile units used to house the children who are displaced while the workmen are renovating the building.

Q. Are mobile units inferior classrooms? A. We have two types. The first unit that we bought was a smaller one, approximately 450 square feet. This unit is not as good as a comparable classroom that would be built in a new school. The second purchase was a larger unit. It's twice that size, approximately right at 750 square feet. This unit in a number of ways is superior to some of the classrooms in the regular building itself.

Court: What do these cost, the big ones?

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A. Approximately \$5,000.00.

Q. Will you describe for the Court the procedure followed in the employment of personnel?

Court: I expect we better deploy for about a ten minute break before we get to that.

SHORT RECESS

【372】 Q. Dr. Self, I believe I just completed asking you about the employment policies of your office. A. The employment of personnel, the responsibility, is vested with the Assistant Superintendent for Personnel, Mr. William Anderson. The first stages of the employment are handled by his offices. There is a recruitment stage which involves a team of people from the school system, usually made up of directors and coordinators from the central office staff, principals from the schools, visiting on college campuses. We visit the college campuses of this state and surrounding states. The attempt here, of course, is to induce as many people as possible to submit an application to the Charlotte-Mecklenburg School System. Upon receiving the application the central office's responsibility is to reference each applicant, get a record of the student teaching of the candidate and make an assessment as to the potential of the person for employment in the Charlotte-Mecklenburg schools. The applications are reviewed again generally by the principal, sub-area director, if one is available, and a judgment is made as to whether or not the person will be employed. Generally speaking the person is employed on an unassigned basis. This is quite important to our employment process because we must employ people before we know whether vacancies occur. We will have the majority of our employment completed by the end of the school year.

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Assignments are made later on [373] as principals review the assigned contracts of the teachers and make a judgment as to whether or not they would fit into a vacancy at their particular school.

Q. Does your office direct a principal to accept a particular teacher? A. Direct a principal to accept a particular teacher?

Q. Yes. A. No, we do not.

Q. What are the considerations on employing a teacher? . . . with reference to race being a factor. A. We are instructed by Board of Education policy to disregard race as factor in employment.

Q. What is the primary factor of employment? A. Qualifications of the candidate as best they can be determined.

Q. Are there teachers in the system who are required to have several skills or several areas of proficiency? A. Yes.

Q. Could you give us an example? A. The first example that comes to my mind are the teachers at the secondary level who would certified to teach, perhaps, in two areas, English and history, or who might teach a full teaching load and accept responsibilities in extracurricular assignments such as directing the work of the drama or newspaper activities, school annual or perhaps even coach an athletic team.

[374] Q. Do these specialties of teachers sometimes lead to problems in filling a vacancy at a particular school? A. Yes, they do. In employment of a coach, for example, you are required to fill a teaching position first and to assess his coaching competency second and he must fit into both categories.

Q. We have seen some mention of learning academies in the answers to interrogatories. Could you tell the Court

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what the learning academies are? A. I can in general. If detailed information is desired, I think Dr. Hanes can testify in detail. Learning academy is an innovative educational program supported by Title 3 funds of ESEA. It was referred to in previous testimony as a PACE project.

Court: What does PACE mean?

A. I'm sorry, I do not know.

Court: Does anybody know what those letters mean?

A. The program at the learning academy is designed to help underachieving boys at the junior high school level. The program is a resident school. By that we mean that youngsters are taken out of their home environment and stay for varying periods of time at the school. The staff there uses all of their skill in trying to reinforce the youngster, get him ready to re-enter the regular academic program.

Q. What determines eligibility for a student as a member of the [375] learning academy? A. The fact that he is underachieving. By that we mean that he has ability to achieve and yet all evidence seems to indicate that he is not working up to his potential.

Court: Is that a 24-hour thing?

A. Yes, sir.

Court: Where is it conducted?

A. It's at the Huntersville community in the facility known

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originally as Torrence Lytle School, one of the closed schools.

Q. With reference to the teaching personnel, how is compensation for a teacher determined? A. On the basis of teaching experience, measured in numbers of years, and the certificate held. The A certificate is awarded for the Bachelor's Degree work and the G certificate for the graduate credit based on a Masters Degree.

Q. What is the source of funds for paying teachers? A. Well, the prime source is the state. Teachers are supplemented in the Charlotte-Mecklenburg community through the aid of a local supplement.

Q. Since 1965 have any schools been closed in the system? A. You mean closed, not closed to transfer.

Q. Right. The doors are closed to students. A. Yes, sir. There have been schools closed.

Q. How many schools have been involved? A. Well, it depends on how you count them. Can I explain?

【376】 Q. Yes, if you will. A. Ada Jenkins School in the far north, Torrence Lytle School referred to a moment ago, Crestdale in the Matthews community, Sterling in the extreme southern section, Plato Price which is near the airport, Woodland is in the northwestern section, the Moores Chapel community; and J. H. Gunn, the present location of the education center headquarters. They were 7 schools that were closed. In addition to that there were some school closings like the York Road Senior High School relocated at Olympic, Second Ward Junior High School, Bain Junior High School, Matthews Junior High School. The reason it's confusing to count is that Bain still exists, for example, as an elementary school, as does Matthews. York Road still exists as a junior high school and Second Ward continues to exist as a senior high school although

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the junior high school grades were closed out. But in terms of total schools there were 7 schools closed in that round of school closings. The most recent one was last year and at this time Morgan and Seversville, Biddleville, Wesley Heights and Woodlawn. There is one other, Myers Street Elementary School.

Q. Has the closing of these schools had any effect on integration, Dr. Self? A. Yes.

Q. In what way? A. The children were reassigned to other schools.

【377】 Q. With reference to the schools they were assigned to, were they roughly put into schools in their former attendance area within the new school? Perhaps that question is not clear. A. I think the answer is yes. For example, the Ada Jenkins students are going either to Cornelius or Davidson; Torrence Lytle students by and large are at North Mecklenburg and the junior high students are at Alexander Junior High and the elementary youngsters would be located for the most part at Huntersville, and I think similar circumstances prevail with the other school closings.

Q. Were the ones that you just mentioned integrated schools? A. The schools to which the children were transferred would be integrated. The schools that were closed would be classified all black.

Q. Now, with reference to the athletic facilities at the schools, what criteria are used in determining athletic facilities at the junior high level? A. The criteria for the program are set forth in what the educator calls an educational program which is a document setting forth the square foot requirements and that sort of thing, which is given to the architect who uses it in drawing up plans for the building.

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Q. With reference to equipment at junior high schools, do you have equivalent or similar equipment at each of the schools? A. Yes. The athletic equipment is provided by a Board of [378] Education fund.

Q. With reference to high schools, are they similarly set up from an athletic program standpoint? A. Yes, with the exception of Second Ward. I couldn't say that about Second Ward facilities. I think they must be upgraded in terms of the completion of the Metropolitan High School. In terms of the equipment, a new school for example which is just formed is provided with an outlay of money to purchase the equipment but the athletic program is supported through gate receipts and it is anticipated that the school will repay the Board of Education fund in terms of equipment allotted.

Q. Are the inter-school athletic programs arranged on a non-racial basis? A. You mean the competition of games?

Q. Yes. A. Yes.

Q. Any school in the system can play any other one, is that correct? A. In terms of football they are divided into two leagues and they play within the two leagues.

Q. These are biracial groupings in the school? A. Yes, they are.

Mr. Waggoner: If the Court please, we have four exhibits we would like to have this witness identify. The first is Defendant's Exhibit #2 for identification, [379] Summation of Integration 1965 (March) and 1968-69 (Oct. 1, 1968); Defendant's Exhibit 3 for identification entitled payroll by Schools; Defendant's Exhibit 4 is captioned Table 3, Library Department, Books per child; Defendant's Exhibit 5

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for identification is entitled 1968 Per Pupil Value of Facilities.

Q. Dr. Self, I hand you Defendant's Exhibit # 2. Do you have a document similar to this? A. Yes, I do.

Q. With reference to Defendant's Exhibit 2, Dr. Self, I direct your attention to Page 3. This is the page with a heading Pupils and Professional Staff by Race March 6, 1965, and 1968-69. Would you tell the Court what appears upon this page with reference to the writing thereon? A. There are statistics here. The statistics are grouped together under four major columns. The first two columns are statistics dealing with numbers of pupils. The last two columns deal with professional staff. Each of these is sub-headed the pupils, for example, into two years, 1965 and the second column 1968-69, and a similar pattern prevails in terms of professional staff. The next sub-head is a Negro and white column under each of these years. The far left column lists the names of all of the schools in the school system and the statistics reflect the number of Negro and white pupils in a particular school in 1965 and, if the school were [380] not one of the closed ones, the number of Negro and white pupils in 1968-69. The same sort of analysis holds true as far as the professional staff is concerned.

Q. For instance, looking at the school called Bain, what information is disclosed for that school? A. The statistics reflect here that in 1965 Bain had 674 children and all of them were white; that in 68-69 Bain had 25 Negro pupils and 699 white. As far as staff is concerned, Bain had 28 2/10 white teachers and '68-'69 they had one Negro and 28 white.

Court: How do you get 2/10 of a teacher?

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A. It's a statistical way of dealing with a traveling teacher who will spend two days a week in a particular school or one day per week or something of that nature.

Q. Dr. Self, with reference to 1968-69 I do not note any fractional teachers. Is there an explanation for this? A. Yes. I think that's attributable to a different technique for computing the statistics. The figures, of course, are made to comply with HEW reports and in the 1965 school year it was permissible to note these itinerant teachers, who are logged in terms of tenths. It was suggested that it would give a better picture of the degree of staff integration if these people were eliminated from the count in '68-'69. They were and therefore the statistics in '68-'69 do not reflect itinerant teacher assignment.

【381】 Q. Did the '67-'68 school year reflect the itinerant teachers? A. I'm sorry, I do not know.

Court: How many floating teachers did you have in the system that you know of?

A. There would be quite a few. I don't know the exact number, but to give some idea as to the size it would be 35 elementary music teachers, a comparable number of physical education teachers, and that would be up to 70. There would be 20 corrective reading teachers. That's the bulk of them.

Court: Something less than an average of one per school.

A. Yes, sir.

Q. Dr. Self, the information appearing on Defendant's Exhibit 2, was this prepared under your direction and supervision? A. Yes, sir, it was prepared by the Research

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Department. The actual information was contained in the interrogatories, the first column, of course, coming from the interrogatories of the court case of 1965, Table 1, and the statistics for the 68-69 column came from the Table 1 of this year's response to interrogatories.

Q. Does this exhibit correctly reflect the changes within the schools with reference to numbers of students and professional staff by race?

Mr. Chambers: Objection.

Court: What is the basis of the objection?

Mr. Chambers: The witness did not prepare this matter [382] and he is asking a witness to give, as one might say, hearsay evidence.

Court: These statistics were prepared in your office under your supervision?

A. Not in my direct office but in an office which is a part of the central office administration.

Court: Prepared by the people who prepare statistics for the school system?

A. Yes, sir.

Court: Objection is overruled. Do you reckon you could get them to prepare some more statistics for the Court?

A. Yes, sir.

Court: That is, just take every other one of these columns, either N or W, whichever is easiest, and run a percentage on that to show what those abso-

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lute numbers are in terms of percentage of the totals. For example, Albemarle Road 68-69, you've got 4 out of 489. That would be roughly 1%.

A. Yes, sir, we could do that.

Court: I'd appreciate it.

Mr. Waggoner: Would you like that for the professional staff also?

Court: Yes. Since this is all here together this can be done with one run of the calculator, can't it?

【383】 A. Yes, sir.

Q. Let's refer to Page 2 of Defendant's Exhibit #2 for identification, will you tell the Court what this sheet indicates? A. This sheet is headed Racial Distribution of Pupils and Professional Staff for 1965 and for 68-69.

Q. I'll ask you if this isn't similar information as that contained on Pages 3, 4, 5, 6, 7 of Defendant's Exhibit #2 except it relates to elementary schools, junior high schools and high schools by category. A. Yes. I think in reality, as the document is stapled together, the top sheet is a summary sheet and the attached sheets offer details in support of the summary sheet.

Q. Now, for instance, on Page 2 I notice that in 1968 there are listed 23,601 Negro students. A. That is correct.

Q. And 58,599 white students. A. That is correct.

Q. And then there are other students within the system. A. Yes, sir. Those other students, I believe, are special education.

Q. And those totals are added down on the bottom lines, is that correct? A. Yes.

Q. Now, with reference to Page 1 of the Defendant's Ex-

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hibit #2, would you explain the meaning of the information contained [384] thereon? A. I'll do my best. When you try to determine the degree of integration or the incident of integration you must determine are you trying to speak from the standpoint of the schools in which there is integration or from the number of pupils who are involved in the integration or the number of teachers and this sheet attempts to do that. At the top of the sheet the section headed Schools Having Integration is an attempt to see the integration, incident of integration from the standpoint of the number of schools involved. and again we have the two year comparison. For example, in 1965 there was one Negro and 22 white schools in which there was integration. I think it must be pointed out that we termed the presence of one member of a minority race in the school to classify a school in this manner. That meant that 23 out of the 109 existing schools were experiencing integration, or 21%. Comparable figures in 1968, 84 out of 112 or 75% are experiencing integration in terms of pupils. As far as staff people are concerned, 3% of the schools, 3 out of 109, were experiencing some degree of staff integration in 1965. The comparable figure in 1968 is 98 out of 112. The reason that that 112 does not agree with the total we have used frequently in our testimony is that it includes the child development centers and the learning academy. The central section of the page picks up the number of students and faculty members involved [385] for both of these years. You have to read the page actually horizontally from top to bottom; that one Negro school back in 1965 had 9 white youngsters, 343 Negro youngsters, making a total of 352 pupils experiencing some degree of integration. That, of course, was Bethune school. The 22 white schools had 469 Negro youngsters, 16,446 whites, or a total

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of 16,922 youngsters. Adding the total number of Negro pupils to the total number of white pupils gives us the total found at the bottom of the page, 17,274 or 24% of our student body. Without going through the whole process for 1968, comparable percentage is 77.

Q. 77%? A. 77% of the student body. In like manner you can come up with two comparable percentages for staff. 5% of our staff were experiencing some degrees of integration in 1965; 91% are experiencing some degree of integration in 1968.

Q. Dr. Self, I next direct your attention to Defendant's Exhibit #3 headed Payrolls and ask if this was prepared under your direction and supervision. A. Prepared by the same Research Department, yes, sir.

Q. Would you describe for the Court the information contained on Defendant's Exhibit #3? A. Again we have a listing of the schools and in the columns the payrolls of the third school month and the fourth school month for each of these schools. Actual payroll data includes [386] the salary of the Principal, assistant principal, the teacher, secretary and teacher aides for all of the schools. The total salary for each school for both months is listed. That total salary is divided by the number of persons served by that total salary and an average salary is computed. I feel compelled to point out to the Court that in examining this document I found what is an obvious error which should be pointed out. It's on the second page and it pertains to East Mecklenburg High School where in the third school month you see 112 teachers listed, and the fourth school month 102. It's obvious that we didn't dismiss ten teachers. In looking for the error I think I fond it at Eastway Junior High School, two schools down, where the number in the third month is listed as 61 and the fourth month as 71.

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I believe somehow we got the names Eastway and East Mecklenburg confused.

Court: What would you do to straighten it out?

A. Given a bit of time. I didn't find it until I got here today.

Q. Now, with reference to Defendant's Exhibit #3, taking at random Albemarle Elementary School. This is a new school, as I understand it, is that correct? A. Yes.

Q. What is the average salary per teacher for the fourth month? A. \$610.98.

Q. Would you tell us what the similar figure for Alexander Street would be? [387] A. Alexander Street is \$711.19.

Q. Would you give us Barringer? A. Barringer is \$669.30.

Q. Would you give us Devonshire? A. Devonshire is \$584.86.

Q. Would you give us Double Oaks? A. \$717.54.

Q. Druid Hills. A. \$703.57.

Q. Huntingtowne Farms. A. \$638.08.

Q. Erwin Avenue Junior High.

Court: I can read the rest of this, Mr. Waggoner.

Mr. Waggoner: If the Court please, I wanted to touch on some of these. Some of these schools are predominantly white, some are predominantly colored.

Court: I am familiar with the widely known fact that your colored teachers as a group have higher salaries than the white because they stay at it longer and have more graduate education. Is this the point you're making?

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Mr. Waggoner: Yes, sir.

Q. Dr. Self, I next direct your attention to Defendant's Exhibit #4 for identification entitled Table 3 and ask if this was prepared under your direction and supervision. [388] A. Yes, it was. It was prepared in the Library Department.

Q. Would you explain to the Court the information appearing thereon? A. It's a tabulation of the number of books per child in the libraries of the schools listed.

Mr. Waggoner: If the Court please, I would like to ask Dr. Self if you are able to detect that predominantly Negro schools have less library books per student.

A. I don't think I could make that generalization.

Q. All right, sir, would you look at Albemarle Road?

Court: It looks like the poor people at Quail Hollow are in bad shape— $7\frac{1}{2}$ books per student.

Q. Dr. Self, do you detect a pattern of discrimination in favor of either of the races with reference to library books?

Mr. Chambers: I object to that, Your Honor.

Court: Objection is overruled.

A. No.

Court: Let me ask about this thing. Is it generally true that the older the school the more books they've got regardless of the race of the students? This would appear to be a pattern looking at this.

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A. I think that would be generally true, Your Honor.

Court: Zeb Vance, for example, with 15.8 and Quail Hollow with 7.6. Do they illustrate that proposition?

【389】 A. Probably would. I think the only thing that might cause it to vary from that pattern is the vigor with which the librarian purges the shelves . . . of old books.

Court: West Charlotte 10½; West Mecklenburg 7½.

Would that be illustration of the same proposition?

A. Yes, sir. Also it would account for the fact that Albemarle Elementary is 6.6. It's a new school just getting started.

Court: OK, you want to get to something else! Had you finished with that?

Mr. Waggoner: Yes, sir, I had finished with it. There has been an allegation that inferior facilities have been furnished and I was seeking to establish there has been something in the nature of equality subject to the problems of a big School Board.

Q. Dr. Self, I direct your attention to Defendant's Exhibit #5 for identification and ask if you can identify it.
A. I believe you are referring to the one headed 1968 Per Pupil Value of Facilities.

Q. That is correct. A. This is a tabulation of the amount of money, the per pupil amount of money that the facility is worth. It was obtained by taking the value of the facility

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from the principal's final report, which is a part of the interrogatories, and dividing that by the number of pupils housed in the facility. Again, there are wide disparities in terms of the dollar amount. [390] Generally speaking the average is a more valid figure than is an individual figure. The average shows that the per pupil facility value for elementary schools is \$861.00; the per pupil value of facilities in the junior high school is \$1,229.00; and the per pupil value in the senior high schools is \$1,567.00.

Q. Dr. Self, these values, as I understand it, are probably cost values of that particular school plant? A. Yes, sir.

Court: Are they in fact cost figures or are they in fact current appraisals?

A. I think they would reflect the insurance values of the building.

Court: This is not land value but simply buildings and equipment, or can you tell about that?

Mr. Chambers: That is one reason we objected to these documents. As I understand it, the principal sits down and says a building and land is worth X-number of dollars and he files his report and sends it to Raleigh.

There is, I submit, no real expertise at all on the part of the principal to determine what the building is actually worth and this is the way they get the figure to make the contention here that the per pupil value of, for instance, Fairview is \$1,000.00. The value of Myers Park Elementary School is \$830.00.

[391] A. May I explain?

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Mr. Waggoner: If the Court please, this does include the site evaluation.

Court: What comment do you have on that?

A. The distortion in the case Mr. Chambers mentioned would be produced by the enrollment. Fairview is a community in which the pupil population is decreasing. The quotient, then, in this arithmetic problem is rather small. It would produce a higher per pupil value. Myers Park Elementary is relatively filled so your quotient here divided into the value of the building would produce less value per pupil.

Court: Mr. Chambers, I believe I'll admit this as nothing but the opinion of the principals as to the value of the facility without any feeling that it has any material bearing on the case.

Mr. Chambers: We didn't object, really, because we thought it might be admissible for whatever it's worth but we think these matters should be brought to the attention of the Court.

Court: If you find, Dr. Self, that this does not include the value of the land, which I assumed it did from the size of the figures, let me know. I assume this includes an estimate as to the value of everything that's there.

A. All right, sir.

[392] Q. Dr. Self, could you give us the senior high average evaluation? A. Reading from the list, East Mecklenburg \$1,249.00. . . .

Court: I can read the rest of the figures.

Mr. Waggoner: I want to get the average.

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A. \$1,567.00.

Q. Dr. Self, there has been a great deal said in the past three days with reference to Metropolitan High School to be located on Second Ward. When was the plan formulated to commit for this location of this type of school? A. I believe the plans have been underway since prior to Dr. Philips departure which would mean it's at least two years.

Q. Would you describe to the Court the type of curriculum that would be offered at this school? A. It's anticipated that the school would offer the courses usually found in a comprehensive high school and that the vocational offerings of the school system would be heavily supplemented, that we would have here what we call one of a kind courses, meaning by that that they would not be offered in any other school in the system—this sort of thing.

Q. I've heard this school described as a magnet type sort of school. Is that proper terminology? A. I would class it as a magnet type school. That certainly is our hope.

Q. This means that it would attract students from all over the school district, is that correct? [393] A. That is our anticipation.

Q. What were the considerations that led to deciding on this particular location for this type school? A. There is certainly a need for offering a secondary program in this area. The program itself needs to be unique in terms of the ultimate goal of the pupils served. It is housed in close proximity to what will be the educational center headquarters for the whole school system. We will have in that educational center some of the outstanding curriculum people in the whole southeast who will be most anxious to work in this Metropolitan High School, offering support and reinforcement for the types of programs undertaken there.

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Q. Was there any community participation in developing this type school? A. Yes, sir. The Second Ward School Committee, I recall, met with Dr. Philips at which time they talked the whole thing through and came to some conclusions in terms of the type of school that would be offered there and the fact that it would be located there.

Q. Do you have an opinion satisfactory to yourself as to whether or not this is a good location for this type of school?

Mr. Chambers: Objection.

A. Yes.

Q. What is your opinion? [394] A. I think it's a good location.

Court: Dr. Self, from the corner of Independence Blvd. to McDowell Street how far is it to the nearest high school, which I would believe would be Myers Park High School? Do you know?

A. No, sir, I do not.

Court: Is it between four and five miles, about four miles?

A. I was going to guess between three and a half and four.

Court: How far is it to East High School?

A. A good bit further.

Court: About seven or eight miles?

A. Seven would be a good guess.

Dr. William C. Self—for Defendant—Direct

Court: And to Garringer what is it?

A. Garringer would be closer.

Court: Around four, maybe more?

A. Three, three and a half.

Court: How far to West Charlotte?

A. About the same distance as to Garringer, about three and a half.

Court: Is there any high school in Charlotte now closer to the center of town than the four that I have just asked you about?

A. The only question would be Harding and I'd say Harding falls in that three or four mile category.

【395】 Court: So you have at present, then, a city of over a quarter of million with a hole about eight miles square in the middle without a high school in it.

A. We do have the Second Ward High School there now.

Court: That's not slated to remain, is it?

A. This school will replace the Second Ward High School.

Court: If you don't maintain or build a school there, you will have a space about eight miles square without a high school?

A. That's true.

Dr. William C. Self—for Defendant—Direct

Q. Dr. Self, with reference to the Greenville area of Charlotte, I understand the residents of that area have asked the School Board to construct a school in that particular area, is this correct? A. That's true.

Q. Would you tell the Court the facts and circumstances surrounding the possible location of a school in the Greenville area? A. The Board of Education in its thirty-five million dollar bond program allocated the thirty-five million dollars by sections. In the section that we are speaking of here there was \$750,000.00 set aside for the construction of an elementary school. The community was in a state of transition, urban development moving in the area, Model Cities planning for the area, and the Board simply held the money in abeyance until such time as they could plan more definitely. The thing first [396] was brought to the attention of the Board of Education when the representatives of Urban Redevelopment presented a plan for land use in the area. Their plan assumed that you would set aside a certain portion of the redevelopment land for the construction of a school and it was at that time that interested groups petitioned the Board of Education to make the decision to build a school in that area. The Board has delayed its decision in this matter.

Q. Does the Board give any reason for the delay? A. No. I think that they simply indicated that they wanted to delay it.

Court: How long do you want to delay it?

A. The Board hasn't indicated that, Your Honor.

Q. Does the Board have any concern as to the possible racial composition of this school? A. Yes, they do. I think that concern was voiced by Mr. Burch, it being that the

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community itself would be housed as an all Negro neighborhood and then that the school population would be all Negro.

Court: Do you know how many folks live in the area that school would serve if it were built?

A. No, sir, I do not and I believe that the more relevant matter would be how many homes it's planned in Urban Redevelopment to put back in the area and the figures we've gotten there is 700 to 1,000.

【397】 Court: How do you describe the Greenville area?

A. Graham Street north of the cemetery that's behind Erwin Avenue Junior High School, that sector in there.

Court: Between Graham and Beatties Ford Road?

A. No, sir, between Graham and actually north of Highway 16.

Court: That's Rozzels Ferry Road?

A. Yes, sir.

Court: Aren't there several schools in there now?

A. Fairview is the only school that's in the section under consideration here.

Court: Bethune School is south of there, isn't it, south of that area?

A. It's on the fringe of it, yes, sir.

Dr. William C. Self—for Defendant—Direct

Mr. Waggoner: We have the plaintiff's experts' proposal and we would like to go into this. This may be a convenient time for all to stop. It probably would take a while.

Court: All right. If there is no objection we'll quit until 9:30 in the morning.

OVERNIGHT RECESS

Thursday, March 13, 1969

Q. Dr. Self, I understand there is a point pertaining to the athletic equipment at junior high schools that you would like to clear up at this time based on your testimony of yesterday. A. Yes, sir, Mr. Waggoner. Dr. Hanes spoke to me after court [398] was recessed yesterday afternoon and called my attention to the fact that I had made an error in testimony pertaining to the athletic equipment, the purchase of athletic equipment for the junior high schools. I had stated that the Board of Education provided a fund for the junior high schools with which they purchased their athletic equipment, football uniforms, baseball uniforms, etc. What I failed to add is that this fund is extended as a loan and the school is expected to repay that over a period of years.

Court: That's from the Board of Education?

A. That's right.

Q. You used the term athletic equipment, does this have to do with the entire physical education program at the school? A. No. Mr. Waggoner. In education circles we distinguish between the physical education program in which all pupils are involved and the athletic program which, in effect, involves team sports.

Dr. William C. Self—for Defendant—Direct

Q. These would be the interschool sports you're talking about? A. That's true.

Q. Dr. Self, have you had occasion to review the analysis and recommendations of Drs. Larsen, Finger and Passey that have been referred to in this case? A. I have, not as thoroughly as I would wish but to a degree.

Q. Dr. Self, is there any educational basis for classifying a school as integrated when it has 10% of one race or more? **【300】** A. I don't believe there would be an educational basis for it.

Court: What does that question and answer mean?
What does that mean to me?

Mr. Waggoner: If the Court please, that means to me—I'm not sure it would mean this to you—from an educator's standpoint there is no arbitrary level of mixing races which creates an integrated situation, no educational basis for this. Any basis would be a legal basis which the Court would have to draw.

Q. Dr. Self, with reference to the recommendations of Dr. Larsen, which I understand to be Alternative I Phase 1, have you had an occasion to review this plan, Page 11 of the report? A. Yes, I have.

Q. Would you give the Court your observations, please, sir? A. The plan itself has some prerequisites, as I understand it, and these are that an additional six elementary schools would be closed that are located in the central section of the city. Erwin Avenue Junior High School would eventually be closed. I don't believe that the plan calls that the school be abandoned immediately; that construction at Northwest Junior High School would be stopped; that the Metropolitan High School would be located on the

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Hawthorne Junior High site, which would necessitate the relocation of Hawthorne Junior High School. They suggested but didn't hold firm to the suggestion that that location might be Shamrock Gardens [400] Elementary School; that the district lines be redrawn, respecting the fact these schools were closed, and no freedom of choice be allowed. Basically I think the plan is one of transport out of the central city section, an attempt to design a new elementary building program on sites which are not in what was termed the Negro downtown area, then pair or link together elementary schools in such a way as to achieve integration, and then assure the maintenance of this integration as the youngsters progress through the grades through the use of a feeder system which would move the integrated elementary pupils into integrated junior high schools and subsequently to senior high schools. I think that the plan has some weaknesses as any plan would. One that appears to me is that it would assume the ability of the school system to house the youngsters who are moved out of the closed schools. This would be a severe housing problem as far as the school system is concerned. I think another questionable point, at least it's debatable, is that it would almost abandon the center city as far as education is concerned. It would impose the problems of transportation. I am not familiar enough with this technique of pairing to know what account is taken for the growth problems of the schools in such a plan and I think philosophically the plan itself is not a very good respecter of elementary education principles.

Q. Does this particular plan square with Dr. Passey's statement [401] that he favors neighborhood schools for grades 1 through 4? A. I believe that it would conflict in this particular instance.

Dr. William C. Self—for Defendant—Direct

Q. Dr. Self, beginning on Page 14 there are various clusterings or pairing of schools. Could you come down to the map and point out the schools that are involved in these particular groupings? (The witness does so.) A. The three schools of the first cluster are these three, Marie Davis, Collingswood and Sedgfield. Group B is Dilworth and Myers Park and Wilmore.

Q. Dr. Self, do you have an opinion as to the distance between Wilmore and the Myers Park Schools? A. We can get a rough approximation by using our blocks.

Court: Are these blocks a mile square?

A. This block right here is a mile square. This is a two mile section, Your Honor. Using a rough technique, slightly over two miles between Myers Park and Wilmore and slightly less than two miles between Dilworth and Myers Park.

Q. The next grouping, please, sir. A. Group E-1, Bruns Avenue. . . .

Court: I don't know that it matters but I'm curious about the distances. Where is Wilmore? The distance between Wilmore and Myers Park . . . you're talking about Myers Park Elementary?

A. Yes, sir.

Court: That's just under three miles as the crow flies, [402] two and a half miles.

A. Yes, sir. Group E-1 is Bruns Avenue which is here.

Court: What artery is that nearest, Highway 16?

A. Off Highway 16. This is the bypass for Johnson C. Smith and Bruns Avenue branches off of there.

Dr. William C. Self—for Defendant—Direct

Q. While you are on Bruns Avenue, what schools does it replace? A. Bruns Avenue replaced Wesley Heights and Seversville and Biddleville.

Q. Dr. Self, what was the racial composition of these schools in 1965, if you know? A. Biddleville I feel certain was black. I think that Wesley Heights and Seversville were totally white at the time. I am not sure.

Q. Did Bruns Avenue roughly take on the same school boundaries covered by the other two schools? A. Yes . . . the other three.

Q. If you will, continue with E-1. A. Ashley Park is here; Enderly Park is here; and Westerly Hills is a new school which I do not believe is on the map. It's right behind the Harding High School. They are clustered right here.

Q. The next grouping? A. Group E-2 is Lakeview, which is here, and Thomasboro, which is here.

Court: Lakeview and Thomasboro are on the south and [403] north side of Interstate 85, are they?

A. Interstate 85 will divide them right here.

Q. The next group. A. Group E-3 is Hoskins and University Park, right here.

Q. Are those two schools again separated by Interstate 85? A. They are.

Q. Let's go to the final grouping, Group H. A. Group H is Alexander Street, which is one of the schools which was recommended for closing, and it's right here; Highland is here; Merry Oaks . . .

Court: On Central.

A. Yes, up here. Midwood, again off Central. I believe

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that's this. Plaza Road is here; Shamrock Gardens is here and Villa Heights is here.

Q. Dr. Self, do you have an opinion satisfactory to yourself as to the distance between Alexander Street and Merry Oaks? A. If we use the same technique of applying the blocks, it would be in the neighborhood of two and a half miles.

Court: Three miles in a straight line.

Q. Would you go to the next grouping? A. Group K-1 is Hidden Valley and Tryon Hills.

Q. Group M-1. A. Chantilly and Elizabeth.

Q. And the final grouping? A. Billingsville, Cotswald and Eastover, these three.

【404】 Court: Mr. Chambers, you feel free to go whenever you wish.

Mr. Chambers: I promised to leave this afternoon at 2:00.

Q. Dr. Self, I direct your attention to Page 16 of the report and as I understand the listing on this page, these schools would not be affected in any way by the recommendations of Dr. Larsen, is that correct? A. I interpret in the same manner, yes.

Q. How many schools are listed on that page, if you know? A. I do not know. Are they to be counted?

Q. Yes, sir. A. At the top of the page there is a grouping which the authors state are already desegregated and they will remain as they are. There are 13 schools in that category. At the bottom of the page there is a grouping of schools that the author states would remain segregated and they categorized into two sections, predominantly

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black—and in this section there are 12 schools—and another section labeled predominantly white 24, if my counting is correct.

Q. As I understand, out of the 76 elementary schools this plan would not affect 49 of the schools, is that correct?
A. I believe that's correct.

Court: Those have a school population of roughly what? It looks like about 8000 in that top pair, 6500, that's **【405】** 14,500—29 or 30,000.

A. That's correct.

Q. Dr. Self, do you know approximately how many students you have in your elementary school system? I direct your attention to Defendant's Exhibit 2 which contains—this is a sheet with a summation of integration, the second page. A. The elementary population is 13,290 Negro, 31,545 white, and to this you would need to add probably several hundred youngsters in special education who appear in that other figure down at the bottom.

Q. Mr. Self, does the Charlotte-Mecklenburg School System employ a feeder system? A. Not a pure feeder system.

Q. Would you explain what is meant by a feeder system? A. As I understand the rigid concept of the feeder system it is determined that all of the pupils in a particular elementary school will feed into a single junior high school and that all of the students in this junior high school will feed into a single senior high school. Our system is not pure in that we have circumstances in which two-thirds of an elementary school will feed into one junior high school and the other one-third will feed into another junior high school and then the junior high school population might be similarly divided.

Dr. William C. Self—for Defendant—Direct

Q. Dr. Self, referring to Page 17 of the analysis and recommendations, did you have occasion to review the assignment [406] areas for the junior and senior high schools under Dr. Larsen's recommendations? A. I have not studied this in any detail.

Q. Turning to Page 25, Alternative 1, Phase 2, Desegregation Plan based on Districts and Transportation, have you had occasion to review these recommendations? A. Yes, I have.

Q. Would you tell us what you find? A. As I understand the recommendation again this proposal would divide the county into four racially balanced districts. The best I can understand, Highway 74 and 77 are used to pretty much determine what these districts would be. Within those racially balanced districts desegregated elementary schools are established, again by pairing or linking or clustering, and by drawing attendance zones around these schools in such a way as to achieve desegregated elementary schools. Again I believe that a feeder pattern is established which would assure the continuance of the integration to the junior high school and the senior high school level. The plan again assumes that no freedom of choice would be allowed and I believe differs from the first phase in that it calls for extensive bussing.

Q. Dr. Self, do you furnish bus service for the Charlotte City schools or the schools located primarily within the City? A. No, we do not, with one exception. The law which was passed, [407] I believe, in 1957 said that county residents who had been provided transportation and who were annexed into the City may not be deprived of their transportation. In effect, with annexation or with extension of City limit lines, we do have some children in the City limits who are furnished transportation.

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Court: How big a group of students is in that fringe area now?

A. I do not know. I assume it would be a fairly small group.

Q. Dr. Self, is it true that roughly one-fourth of the student population is furnished bus service, some 23,000?

A. I believe that that's a pretty accurate figure.

Mr. Chambers: I object to that and move to strike. There is the transportation officer who has the information and the question, first of all, was leading and, secondly, Dr. Self has not stated he knows definitely or approximately that that is the figure.

Court: You have a copy of the dope sheet, don't you, that Dr. Self handed in when he first started to testify? This says that 23,000 students were furnished busses this year at a cost of \$19.00 per student. That's on Page 4 near the bottom. 271 busses, 23,000 children, cost per year per child \$19.00.

Mr. Chambers: I have a copy here.

Court: Motion denied. Go ahead.

【408】 Q. Dr. Self, with reference to Alternative 1, Phase 2, have you had occasion to consider this plan from an educator's standpoint? A. I have.

Q. Is this proposed plan a feasible plan for operating the school system in this county?

Mr. Chambers: I object. That calls for a conclusion of law on the part of the witness. I think the witness can state whether or not he has some objection, some specific defects.

Court: I think that's correct.

Dr. William C. Self—for Defendant—Direct

Mr. Waggoner: If the Court please, this question related to his opinion as an educator.

Court: Give your comments on it from the stand-point of educational advantages or disadvantages. I believe that would be a competent question.

A. I think that the same problems posed by the first Alternative 1, Phase 1, would be posed by Alternative 1, Phase 2, and I listed those as the fact that it requires that the schools in the central city be closed and the students be transported out, thereby imposing a housing problem on the school system. I stated that it would mean the virtual abandonment of education in the central part of the city; that transportation problems would be imposed and that it again does not respect to a degree the principles of elementary education.

【409】 Court: As far as the theory of education is concerned, you say the two plans have substantially the same objections as you see them.

A. Yes, sir.

Q. Dr. Self, if you will, referring to Page 42 of the report, captioned Alternative 2, a Desegregation Plan Based on Districts and Transportation, have you had occasion to examine these recommendations? A. Yes, I have.

Q. Give the Court the benefit of your observations.

Court: Is this the plan that Dr. Passey described?

Mr. Waggoner: Yes, sir, as I understand it, it is.

Dr. Passey: No, it's a combination of two.

Mr. Chambers: Are you talking about Alternative

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Mr. Waggoner: Alternative 2, beginning Page 42.

Dr. Passey: This second one is a combination of the four sectors that Dr. Finger delineated.

Court: A plan was described by Dr. Larsen, a plan was described by Dr. Finger, a plan was described by Dr. Passey. My question is is this the one that Dr. Passey described?

Dr. Passey: No.

Mr. Waggoner: I believe Dr. Passey's begins on Page 46, which is Alternative 3. There are four plans really that they presented.

【410】 Q. As I understand Alternative #2, this is a desegregation plan which is based on districts and transportation. The uniqueness of this plan is that it asked for a reorganization of the school system itself from a 6-3-3 pattern to a primary, middle grade and senior high school pattern.

Q. Would you explain the 6-3-3? A. This means that six elementary grades are housed together, three junior high school grades are housed together and three senior high school grades are housed together. The other organizational plan calls for the first four grades, or kindergartens, if kindergartens are there, to be housed in the primary school; for grades 5 through 8 to be housed in the middle school—this is the usual pattern of operation—and for grades 9 to 12 to be housed in the senior high school building. As I understand Alternative #2, it calls for no abandonment of schools in the central section of the city and I believe it assumes that they would continue to be used. I believe that the basic difference between that and Alternative #3, as I was able to detect it, was that Alternative #2 is geographically based and Alterna-

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tive #3 is not geographically based, if I understand it correctly.

Q. With reference to Alternative 3 beginning on Page 46, you stated that it is not geographically based. By what means would students be assigned under this? A. Again, as I understand it, the primary school would be [411] neighborhood oriented. I understand Dr. Passey was attempting to respect these principles of elementary education that we alluded to earlier and this sort of an organization; that a feeder system would be established that would assure the continuation of integration in the junior and senior high schools.

Q. Would there be substantial transportation under Alternative 3? A. Yes, there would.

Court: Does anyone of these plans contain any proposals about changes in the county schools as such, or what we used to call the county schools?

A. Yes, I believe that the outlying schools are incorporated in the plans, on Page 47, for example. The schools that would be contained in learning complex A are identified as being East Mecklenburg. . . .

Court: That's in the city.

A. Well, it was formerly a Mecklenburg County School. The community has grown up around it. If you look at Page 48, learning complex B, you can see a mixture of former city, former county, South Mecklenburg being county oriented, Smith Junior High School county oriented, Erwin Junior High School central city, Collingswood and Pinewood are right on the periphery, Shamrock Gardens is in the inner limits of the city; Bethune is central city.

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So there is a mixture of what would be termed former city and former county in this plan.

【412】 Q. Dr. Self, on Page 47 dealing with learning complex A, I notice that the students at Williams Junior High School would be going to high school at East Mecklenburg High. Where is the Williams Junior High School located? A. Williams Junior High School is near the intersection of I-85 and Statesville Road.

Q. Where is East Mecklenburg High School? A. Eastern section of the city off of Old Monroe Road, just beyond the point where Old Monroe Road intersects Rama Road.

Q. Do you have an opinion as to the distance between these two schools? A. It would be in excess of five miles.

Court: Does the area served by Williams Junior High School extend north of I-85?

A. I'm not certain, Your Honor, we could look at the map to determine it, if we had a junior high school map.

Mr. Waggoner: Are the junior highs located on this map?

Mr. Chambers: There is a junior high school map.

Q. Come down to the map, Dr. Self. (The witness does so.)

(Conference out of the hearing of the Court Reporter.)

Court: Dr. Self, in this dope sheet that you gave me yesterday you indicated that transportation cost per pupil is \$19.00 a year. Does that include the cost of the busses, maintenance? What does that \$19.00 include?

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A. I think that would include the operating costs, the gas, oil, [413] tires, upkeep and probably the salary of the driver. It would not include the capital outlay expenditure for buying the bus.

Court: Are there some figures on the total cost of bus transportation?

A. Yes, sir. If they are not available in the deposition, we can make them available.

Court: How many of the first three or four grades in the county ride busses to school?

A. Again I could only approximate. There are 42,000 elementary youngsters. Of that 23,000, 22,000 will be primary —10,000 would be a very rough guess.

Court: Is the school bus operation in the county, generally speaking do they haul as many of the first four grades on busses as they do the other grades?

A. I wouldn't think that would be true because of our attempt to locate the elementary schools in closer proximity to the youngsters than we do the secondary schools.

Court: Is there any information on that subject?

A. I'm sure there is.

Q. Dr. Self, with reference to establishing boundaries of an elementary school, is there any rough guide that you attempt to use insofar as establishing distance of the school boundary to the school itself? A. A very rough guide is a mile but, of course, you will vary [414] that radius that

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you would use to draw circles around the elementary school depending on the section in which you were locating it. In the central section of the city or in densely populated areas you may have a radius much less than that and in the sparsely populated sections a radius in excess of that mile.

Q. In the city section how far will a school ordinarily be located at a maximum from the boundary of the school district? A. It's an approximation—I'd say $\frac{3}{4}$ of a mile to a mile, and again you will have exceptions to that.

Q. Dr. Self, with reference to these four recommendations, or do you have an opinion as to whether or not any one of these or any two or any three or any four of them could be applied to Mecklenburg County on an educationally sound basis?

Mr. Chambers: We object to that.

Mr. Waggoner: I'll withdraw the question.

Court: That's a fairly pertinent inquiry.

Mr. Chambers: I would think that the witness ought to say what objections he might have to the plans rather than to say definitely they cannot be worked. I understood when he started off that he hasn't had a chance to study the plans in detail.

Mr. Waggoner: If the Court please, I will take each plan separately.

Q. Dr. Self, referring to Page 11, Alternative 1, Phase 1, a [415] Desegregation plan based on Elementary School Pairing and Elementary-Secondary Feeder Systems. Do you have an opinion satisfactory to yourself as to whether or not this plan from an educational standpoint could be feasibly implemented in this school district?

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Mr. Chambers: Objection.

Court: Well, I believe I'll overrule the objection.

Q. Do you have an opinion? A. Yes.

Q. What is your opinion? A. I think the plan would cause considerable problems for the school system in terms of housing. It would impose rather sizeable burdens of transportation upon the school system.

Q. Would it have any effect on the neighborhood concept of schools?

Mr. Chambers: Objection, leading.

Court: Overruled.

A. Yes.

Q. In what way?

Mr. Chambers: Your Honor, my objection now, the question is would it have any effect on the neighborhood school concept, what neighborhood school concept?

Mr. Waggoner: The one that Dr. Self has testified to.

Mr. Chambers: I haven't heard any testimony about a neighborhood school concept.

【416】 Court: I heard Dr. Passey talking about it and another witness talked about it a day or two ago.

Mr. Chambers: I understand but we have different ideas of what neighborhood schools are.

Court: Let's go at it the quickest way. You go ahead and answer the question and I'll overrule the leading element in it.

A. When you asked the question I was thinking about the youngsters from the central city area that would be bussed

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out to surrounding schools. If the youngsters are taken out of their home community in this way, in my thinking it does violate the neighborhood school concept.

Court: How far would you say children in the county travel the first three or four grades to get to school? I know this is like asking how far is it to a star, but can you give me some idea how far the average county child has to go to get to his first, second, third grade school.

A. As I recall in one response to a question in a deposition Mr. Harrison indicated that the average round trip mile for school bus was 30. I don't know whether he has any breakdown between elementary and secondary youngsters from that general figure or not, Your Honor.

Court: Is there any limit on how short a trip you'll haul folks on a bus?

【417】 A. The rules and regulations state that we transport children who live beyond a mile and a half radius of that school.

Court: So everybody who rides the bus is supposed to ride at least a mile and a half.

A. Yes, sir.

Q. Dr. Self, could Alternative 1, Phase 1, be accomplished by the Charlotte-Mecklenburg School System on your present budget?

Mr. Chambers: Objection.

Court: Overruled.

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A. No. I believe that Plan 1 would impose additional demands in terms of transportation expenses. It might also cause some financial problems in terms of housing the youngsters.

Mr. Chambers: Your Honor, I hate to keep objecting but the witness still hasn't gotten to anything, I submit, that is relevant or competent here. He said would the plan pose some problem within the present budget. How can he state that? The witness doesn't even know what it's going to cost in terms of transportation and the budget, as I understand it, is submitted for 1968-69. Now, how would a 68-69 budget apply to 69-70 in terms of this plan?

Court: I just hear him saying that he thinks it would cost more money, that's all it means. Do you get any more than that out of his answer, Mr. Waggoner?

Mr. Waggoner: No, sir, we haven't had a chance to cost [418] this out. It is more expensive is what he testified to.

A. If I might explain, Your Honor. I certainly know that I can come up with no concrete figure. I make my deduction on the basis of the fact that I feel that transportation would be required for youngsters who are not now getting transportation. So you're led to believe that this would be an additional expense.

Court: I am aware of all the infirmities which your objection suggests. Go ahead with the next question.

Dr. William C. Self—for Defendant—Direct

Q. With reference to Alternative 1, Phase 2, beginning on Page 23, do you have an opinion from an educational standpoint as to whether or not this particular recommendation could be feasibly initiated in the Charlotte-Mecklenburg School System?

Court: Where does that start?

Mr. Waggoner: Page 23, Your Honor.

Court: Hasn't he already answered that question about all of these things?

Mr. Waggoner: If the Court please, it may very well be.

Court: This is the one Dr. Finger proposed, is it?

Mr. Waggoner: Yes, sir, as I understand it.

Court: And as I remember what he said, he said this does violence to his view of the community school system and abandons the center of the city and raises questions of capacity to house the students, raises questions of transportation, doesn't allow for growth [419] and doesn't comply with the elementary educational principles. Are you just asking for a repeat of that?

Mr. Waggoner: No, sir, I'll withdraw the question.

Court: Ask another question.

Q. Dr. Self, with reference to the Alexander Street School, do you know approximately how far the school is located from the school boundary of the most distant point? A. No, I don't.

Court: Has the boundary got some black lines around it up here?

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A. Yes, sir.

Q. Would you come over to the map and take a look, if you would.

Court: I'll make a guess of half to three-quarters of a mile, but I'd like to hear what he says.

Mr. Waggoner: We'll accept the Court's guess.

A. The school is within a block of the attendance line at one point.

Court: Which street is that?

A. 11th Street.

Court: So that district extends north from 11th Street.

A. Yes, sir.

Court: What is the western boundary of it?

A. North Tryon and 16th Street.

Court: What about on the east? Is it Seigle Avenue?

A. McAden Street I believe is that boundary.

【420】 Court: That particular district is about five blocks deep and ten blocks wide, isn't it?

A. That's about right, yes, sir.

Q. Dr. Self, do you have an opinion how far a student residing in that school district would have to travel if he

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were assigned to Plaza Road? A. As the crow flies distance again is approximately two miles.

Court: Dr. Self, are the buses supplied by the State or County?

A. The buses are purchased by the local school system initially. The operating costs are paid by State funds. Then that bus is replaced by State funds when it is traded in.

Court: That's the way the transportation in what used to be the county schools is now provided.

A. That's true.

Court: And the local unit buys the equipment.

A. Initially.

Court: And they replace it from time to time by State funds.

A. Yes, sir.

Court: And the gas and oil and maintenance are provided by. . . . ?

A. The State.

Court: And the drivers are hired by. . . . ?

A. By the State.

【421】 Court: So the expense to the local unit of transportation is the initial purchase of the equipment?

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A. That's correct.

Court: What do school buses cost now?

A. Approximately \$4,500.00, depending upon the size.

Cross Examination by Mr. Chambers:

Q. Dr. Self, you're reasonably familiar with the racial housing pattern in the City of Charlotte, aren't you? A. Reasonably so.

Q. In your opinion would that map there with the purple, green and orange reasonably depict where the minorities are residing in the City of Charlotte? A. I believe so.

Q. I believe within that cluster of schools in what we refer to as the inner city you have several elementary schools, do you not? A. Yes.

Q. I count something there of approximately 17 elementary schools. How would you integrate those schools, Dr. Self? A. I don't know.

Q. Some of those schools are relatively new, aren't they? A. Yes.

Q. I call your attention to your exhibit in answers to [422] interrogatories, Table #4, which gives you the dates that the schools were constructed and additions made to the schools. I think University Park is in this section, this area right here.

Court: Is that between Beatties Ford Road and I-85?

Mr. Chambers: I-85 is north of it and Beatties Ford on the eastern boundary.

Q. I believe that school was built about 1957. A. That's correct.

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Q. And you made additions in 1958 and 1968. A. 1964,
yes, sir.

Q. All of this took place subsequent to the Supreme
Court's decision in 1954. A. That's correct.

Q. The school is all black. A. Yes, it is.

Q. I think also in this district is Lincoln Heights.

Court: Locate that for me, if you will.

Mr. Chambers: Lincoln Heights is off Lasalle and
Newcastle.

Court: It's also west of Beatties Ford Road and
below 85.

Mr. Chambers: East of Beatties Ford Road and
below 85, between Beatties Ford and Newland Road.

Q. That school was built in 1956. **[423]** A. That's correct.

Q. Addition in 1958. A. That's right.

Q. Also subsequent to the Supreme Court decision in
1954. A. That's right.

Q. It's all black. A. Right.

Q. I believe also in this district is Oaklawn, is that cor-
rect? A. Yes.

Q. That school was built in 1964. A. Correct.

Q. All black. A. Yes.

Q. Also in this district is Bruns Avenue. A. Yes.

Q. That school was built in 1968. A. That's correct.

Q. All black. A. I'm not absolutely certain about that.
There were one or two children at one time.

Q. I call your attention to Table #1, also in the answers
to interrogatories. Bruns Avenue shows a population of
740 Negro and 4 white. A. That's right.

Q. Now, I think you were testifying a moment ago that
in 1955 or **[424]** sometime that two of those schools in the

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Brunswick Avenue district were all white, is that correct? A. I believe I said either all white or nearly all white.

Q. I believe that Seversville formerly covered students on Summitt Avenue? A. I think that's true.

Q. I believe that when you started constructing Brunswick Avenue that that was a racially transitional area. A. Yes.

Q. In fact, before Brunswick Avenue was actually constructed Seversville and Westerly Heights had become almost all Negro. A. That's true.

Q. Didn't you know, Dr. Self, that when you opened Brunswick Avenue that it was going to be all black? A. We could have deduced that.

Q. I believe also in this district is Fairview Elementary School, is that correct? A. That's true.

Court: Fairview, I saw it on the map a while ago but I've forgotten.

Mr. Chambers: In the Greenville area we were talking about. I think it's on or somewhere near Oliver Street—near on Oliver Street.

Mr. Barkley: In the Model Cities area.

Mr. Chambers: It's one block north of Oliver Street.

【425】 That school was built in what year, Dr. Self?
A. Fairview?

Q. Fairview. A. Built in 1925.

Q. And you had one addition in 1937. A. That's correct.

Q. I think you now plan to close that school, or that's what is proposed in your five year plan. A. That's true.

Q. I think also in that district is Bethune. A. That's right.

Q. That school was built in 1912. A. That's right.

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Q. No additions since that date. A. No.

Q. I think also in your five year plan you plan to phase out that school. A. That's correct.

Q. I believe also in that district is Zeb Vance. A. That's true.

Q. That school was built in 19 A. 18.

Q. 1918, no additions since that date. A. That's right.

Q. I believe that in your five year plan you plan to phase that [426] out also. A. Yes.

Q. Does it have a cafeteria? A. No.

Q. Is it the only school in the system without a cafeteria? A. I believe it is.

Q. How do you feed the children? A. Transport the food in.

Q. Where do they eat? A. They eat in the open space. I assume it's part of an auditorium.

Q. I believe also in that district is First Ward. A. Yes, First Ward is in the district.

Q. And I take it it was replaced in 1968. A. Yes.

Q. All black. A. Yes.

Q. Dr. Self, couldn't you reasonably surmise hereto that when you opened that school it would be all black? A. Yes.

Q. I believe in 1964 you also built Devonshire. A. Yes.

Court: Devonshire is one I don't have in mind.
Where is it? Is it pretty far south?

A. No, sir, it's in the northeastern section.

[427] Court: I see Devonshire. It's out off Hickory Grove Road. Is that on the same lot with Cochran at the end of the Plaza?

A. Yes, sir, on the back side of that lot.

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Q. That's all white, isn't it, Dr. Self? A. Yes, it is.

Q. Didn't you reasonably believe when you opened that school that it would be all white? A. I don't know that you could reasonably believe that that school would be totally white.

Q. Did you reasonably believe it would be predominantly white? A. Yes.

Q. I believe you had a few Negroes assigned there, didn't you? A. I believe at one time there were.

Q. And under the freedom of choice they transferred out. A. I do not know the circumstances.

Q. I call your attention to Table 7 in your second answers to interrogatories. Devonshire shows that for the three years under the freedom of choice you had no Negroes to transfer out of Devonshire. A. That's right.

Q. And Table 1 in your first answers to interrogatories shows that you had 889 white and no Negroes in Devenshire. A. That's correct.

Q. And for 67-68 you didn't have any Negroes in the school. [428] A. That's true.

Q. You apparently didn't have any Negroes in the district. A. Evidently.

Q. I believe you also built Albemarle Road in 1968. A. That's right.

Q. Didn't you reasonably believe, Dr. Self, that when you opened that school it would be predominantly or all white? A. Predominantly white, yes.

Q. I believe its enrollment right now is 499 white and 4 Negroes. A. That's true.

Q. In 1969 you built Beverly Woods. A. That's correct.

Q. Did you reasonably believe when you opened that school it would be predominantly white? A. Yes.

Court: Where is Beverly Woods?

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A. Southern section, near the Huntingowne Farms section, below Sharon School, off of Sharon Road.

Court: I see it now. It's right at the tip end of the city limits off Sharon Road.

A. Yes, sir.

Q. Your Table 1 figures show that Beverly Woods has 286 white and no Negroes in 1968-69. A. That's correct.

Q. Now, Dr. Self, despite your change in the construction plans [429] for Olympic and Independence you have built several all white schools and several all black schools since 1954, have you not? A. As it has turned out, yes.

Q. And I think that on your drawing board right now are plans to build more schools that are going to be all white and some that will be all black. A. I'm sure that the enrollment in the schools will be affected by the neighborhood served.

Q. You know, Dr. Self, that if you use geographic boundaries and build another school in this area now colored pink that you're going to end up with an all black school, is that correct? A. I think that's the apprehension that the Board of Education was expressing when they held up on the Greenville School.

Q. You know also, Dr. Self, that if you build Second Ward right here in the green it's going to end up all black. A. I do not know that.

Q. How would you change it, Dr. Self? A. By offering a program at that school that would induce enrollment from outside the area.

Q. I believe you testified in deposition that in your opinion it would probably end up all black even with those programs. A. I admit there is an element of risk in the location of the school there.

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【430】 Q. I think, Dr. Self, that you are talking about building a magnet school that would draw people from all over the area because of the special programs you're going to have? A. Yes.

Q. Would you tell the Court, Dr. Self, approximately what it would cost to build such a school? A. An estimate in the neighborhood of three and a half million dollars.

Q. In your opinion you can build a school that would serve as a magnet for the whole county for three and a half million dollars? A. I think that a more relevant fact is not how much you're going to put in the building but how much you're going to put in terms of current expense to continue to operate the school year after year.

Q. I meant to include that in the question. In your opinion what would it cost to build and equip such a school? A. That would be the three and a half million.

Q. To build and equip? A. Yes, sir.

Q. How about to institute an operating program for one year? A. I think that the only way I can give you an opinion on that is to assume that a number of the course offerings would require a more favorable pupil-teacher ratio than we now know. That is, instead of having 1 to 30, you're talking about 1 to 15 【431】 or 20 in terms of some of the vocational programs. This would mean a higher per pupil expenditure. The present level of expenditure is \$536.00 so a horseback guess would be that the per pupil expenditure would rise to \$700.00, \$750.00.

Q. Overall how much are we talking about? A. It depends upon the number of students you had there then.

Q. Let's estimate that we have the projection that you have projected for that school. A. Let's say that we have 800 pupils there and assume it would cost \$150.00 more per pupil to provide the type of program. If you could

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multiply these—and I doubt my own ability to do it—you'd come out with an approximation.

Q. Would it be approximately a million dollars or two million dollars?

Court: I'm not following this question. Are you asking questions about the annual operating cost?

Mr. Chambers: I'm trying to show, Your Honor, that they don't even have the money to build what they're talking about putting there.

Court: As I have heard his testimony he says that the estimated cost of construction is about three and a half million dollars and for 800 pupils the possible additional cost of tuition and operation would be about \$200.00 per pupil which would be 150 or \$200,000.00 a year extra for that school. Is that a [432] correct interpretation of what you said?

A. That is a correct interpretation.

Mr. Chambers: He says \$150.00 over and above the regular rate.

Court: This is what I'm saying. This is what I thought he said.

Mr. Chambers: I thought he was saying that if you got \$650.00 average per teacher, you now need \$800.00 per teacher.

A. That's true. If you would offer at this school the type of program that would attract youngsters there, you would have to do something above what we're presently doing.

Q. Dr. Self, just taking the construction cost itself, I think you estimated three and a half million dollars. A. That's correct.

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Q. How much money have you allocated for that school?
A. If my memory serves me right, it's about 2.2 million.

Q. When do you plan to allocate the other? A. The rest of it would have to come in a subsequent bond issue.

Q. Right now you don't even have the money to build the school you're talking about. A. Not the total school. However, we are accustomed to building our schools a piece at a time. Practically every school we build goes through this period.

Q. Dr. Self, when you built schools since 1954, what efforts did [433] you make, other than what you have testified to yesterday, to locate the schools in an area that would effect the greatest maximum integration of students in the system? A. The schools were located in such a way as to house the youngsters, Mr. Chambers, not to effect a maximum amount of integration.

Q. You did not attempt to do it. A. We made an attempt to house the youngsters in the neighborhood.

Court: Have you had any expression of opinion which you can recognize as representative from the people in these communities that you have been talking about, that is, Greenville and Second Ward, as to what they think about building schools in those places, the people who live there?

A. Your Honor, I think the presentation which the Board of Education received from a delegation in the Greenville community, petitioning the Board to locate the school there, could be regarded as such an example.

Q. Several Negroes in the area have approached the Board and asked them to build schools in the Greenville and Second Ward areas. A. I believe it's more than several,

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Mr. Chambers. It seems to be a pretty well organized effort. I do believe there is difference of opinion within the community whether the school should be located there or not.

【434】 Q. Is that any different, though, Dr. Self, from some of the white groups who have appeared before the Board and asked for schools in their community? I call your attention to Old Providence. A. I didn't get the first part of your question.

Q. Is that any different from some of the white groups that have appeared before the Board and asked for schools to be located in their communities? A. Oh, no.

Q. Now, Dr. Self, I think you indicated yesterday that the Board had instructed you to employ and assign teachers without consideration of race. A. That's correct.

Q. First of all, in 1965 when you closed the seven schools you indicated yesterday, how many of the black principals were assigned to schools as principals? A. None of the seven.

Q. I think they were all assigned as Assistant Principals with the same salary. A. That is correct.

Q. And I think that at Villa Heights right now you have continued with the Negro assistant principal at the same salary. A. That's true.

Q. This isn't in line with your regular pay scale, is it?
A. No, it isn't.

【435】 Q. I think that the only assignment of a person of the opposite race to a school where the race is in the minority are two cases that were effected this year, one at Albemarle Road and one at another elementary school.

Court: Will you be going on for a little while longer with Dr. Self?

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Mr. Chambers: Yes, sir.

Court: Maybe we better take a recess until 11:15.

SHORT RECESS

Q. Dr. Self, do you have today any white principal assigned to a predominantly or all Negro school? A. No. I beg your pardon, hold on just a second. I believe Barringher would fall in that category.

Q. Would Tryon Hills be another example? A. Yes, it would.

Q. Would Hawthorne be another example? A. Yes.

Q. Would Piedmont be another example? A. No.

Q. Those three schools we just named, I believe, are all in transitional areas, Negroes moving in and whites are moving out. A. They are transitional.

Q. I believe that when these white principals were assigned there the schools were predominantly or all white.
【436】 A. Yes.

Q. I believe that Piedmont was another example of a transitional area that started off with a white principal and a white student body that became all Negro in student body and you assigned a Negro principal. A. The school has a Negro principal but it's not all Negro.

Q. It's predominantly Negro. A. It's predominantly Negro.

Q. He was assigned there after the student body became predominantly Negro, was he? A. He was assigned there during the transitional period.

Q. Have you really changed your policy, Dr. Self, of assigning white principals to white schools and Negro principals to Negro schools? A. I don't believe that we had a policy of assigning principals according to race related to the composition of the school, Mr. Chambers.

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Q. I believe, Dr. Self, that before 1954 you had such a policy, didn't you? A. I would call it custom rather than policy. Policy, to my way of thinking, is the word that we have in a policy notebook, which is direction by the Board of Education.

Q. I believe it was constitutionally required then? A. I'm sorry, I don't understand that.

Q. Well, we'll use your word custom. Have you really changed [437] your custom of assigning Negro principals to Negro schools or white principals to white schools? A. I believe we have altered the pattern, yes, sir.

Q. Your statistics don't quite show that, do they? A. If you're talking about overwhelming numbers in terms of statistics, they may not, but there is still a white principal at Hawthorne Junior High School. It's been transitional for a number of years.

Q. I believe this year it just became predominantly Negro, didn't it? A. I believe this year was the turning point in terms of percentage ratio.

Q. That's about the same as the other three schools that we talked about, isn't it? A. We do have a white principal at Cornelius and the ratio is about 50-50 there.

Q. Now, you hired several new teachers in 1966-67, 67-68 and 68-69, did you not? A. I'm sure we did.

Q. I call your attention to Table #10 contained in your first answers to interrogatories, which is Plaintiff's Exhibit #1. Do you have that? A. Yes, I do.

Q. Would you look at Page 5 of that table 10? A. Yes.

[438] Q. I believe for the 1966-67 school year you hired 34 Negro teachers and 279 white teachers new to the system in the elementary schools? A. That's correct.

Q. And I believe you hired 64 Negro teachers and 304

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white teachers new to the system in 1967-68. A. That's right.

Q. And 39 Negro and 291 white teachers for 1968-69. A. That's true.

Q. What accounts for the disparity of the number of Negro and white teachers hired? A. I think that one of the conditions behind the circumstance is the fact that this is new teacher only, that there have been increased opportunities for employment by young Negro graduates during this period of years. I know specifically that northern school systems have recruited our campuses very heavily. This means, of course, that ultimately the number of teachers that are available for employment are reduced. I think that opportunities other than teaching are beginning to open up for young Negro graduates as well, so that he might have some choice in terms of his employment. We are beginning to see for the first time that we are beginning to lose good candidates in terms of employment to fields other than the teaching field and to other school systems.

Q. Are you saying that you don't have any Negro applications? [439] A. I am saying that the number of Negro applications is decreasing.

Q. I believe, Dr. Self, that you indicated your policy for employing teachers that you had an interview with the teacher after you received the application? A. Well, we will interview if we possibly can even prior to receiving the application. The purpose of the interview here is more to disseminate information about the school system in an effort to interest the prospective applicant in coming to Charlotte-Mecklenburg.

Q. Does the principal of the school play a part in the selection of the applicant? A. Yes, they do.

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Q. And would the principal of the school know whether the applicant was white or Negro? A. In terms of the interview or the application blank?

Q. At any stage in the process? A. He would not deduce this from the application blank unless he looked at the experience of the person or the training college attended and made such a deduction.

Q. He could do that relatively easily from the college that the applicant had attended, could he not? A. He could, yes, sir.

Q. I believe you have a policy of requiring teachers to have a score of 500 on the National Teachers Exam. [440]
A. That's a State policy I believe, yes, sir.

Q. Is it the State policy or the local Board policy? Isn't the State policy 450? A. Yes, that's right.

Q. Is the City Board policy 500? A. I believe that's true.

Q. When did you institute that policy? A. I don't know.

Q. Dr. Self, does every teacher in this system have a 500 score in the National Teachers Exam? A. I would assume so. I do not know for sure.

Q. Does every teacher in this school system have a Class A certificate or above? A. I am fairly certain that we would have a handful, probably less than five, without a Class A certificate.

Q. Would they be Negro or white, Dr. Self? A. I don't know.

Q. How does the Board justify its policy of 500 or above on the National Teachers Exam with some teachers with less than a Class A certificate? A. I don't know.

Court: Does this relate to anything pertinent to the case?

Colloquy

Mr. Chambers: We think so, Your Honor, we think it relates to the matter of discrimination in the employment [441] and assignment of teachers.

The Court: The requirement that the teacher have a certain proficiency?

Mr. Chambers: Our contention is that, although we haven't given you all the evidence you probably want in order to find a fact of employment less Negro teachers than white, we were bringing that out only to show the next thing we're getting to and that's how the teachers are assigned after they are employed.

Court: Have you got some figures on the number of black and white teachers in the school system?

Mr. Chambers: Yes. That's included in Tables 9 and 10 and in Table 1.

Court: It's not in 10.

Mr. Chambers: Also in the defendant's exhibit that was introduced yesterday. I think it's Defendant's Exhibit #2. Table 1 also has the number of teachers in the system. I think it's by school rather than total.

Court: Is there a total on hand?

Mr. Chambers: Defendant's Exhibit 2.

Mr. Waggoner: Page 2.

Court: Let me see what that is so I'll know where we're starting here.

Mr. Chambers: 907 Negroes, 2706 white.

Court: 25% of the teachers are Negro and the other is [442] white. What does this prove?

Mr. Chambers: I'm talking about the way the teachers are assigned after they get in the system and that's why I was going to Table #9.

Colloquy

Court: Is that the one you had out a while ago or is that another one?

Mr. Chambers: We had out Table 10. Table 9 is what we have now.

Court: Mr. Chambers, as you probably know, I haven't read all the law on this subject. Has the Fourth Circuit Court or the Supreme Court said anything definitive on the subject you are pursuing now?

Mr. Chambers: The Fourth Circuit said something and the Supreme Court rather definitively in Bradley vs. the City of Richmond which was the first Supreme Court decision with respect to teachers. It said that teacher desegregation was one of the requirements of the Supreme Court decision in Brown.

Court: The Charles City case, is that the latest one the Fourth Circuit actually wrote an opinion in?

Mr. Chambers: The latest Fourth Circuit opinion was Brewer.

Court: That's not an opinion.

Mr. Chambers: It says something on teachers and that's the thing we were getting into here. Brewer says [443] and Bowman also says something on teachers.

Court: Brewer and Bowman are both one or two paragraph per curiam opinions, aren't they?

Mr. Chambers: No. Bowman sets out the requirement that the School Board present to the Court a time table for desegregation of teachers.

Court: In the context where you had all black teachers in black schools and all white teachers in white schools.

Colloquy

Mr. Chambers: I'm not certain whether there had been some integration or not.

Court: I'm asking this question as purely practical matter. If you've got between 25 and 30% of the student body Negro and between 24 and 25% of the teachers Negro and some assignment of both races to both types of schools, I just wonder as a practical matter if the teacher problem isn't something that we could just spin our wheels over from now on without getting to anything worth having spent the time on.

Mr. Chambers: I think it's relatively clear now that the school system has to take some steps to completely desegregate teachers in the school system.

Court: You think the Charles City case did not reflect the law in what Judge Haynsworth said?

Mr. Chambers: I think it did. I think the Charles [444] City case requires that this School Board present a plan for complete desegregation of teachers. I think that Bowman required it. I think that Brewer required it.

Court: You've got a different factual situation here than you had in those cases.

Mr. Chambers: I submit not, Your Honor.

Court: Where there had been no pretense at breaking down the line.

Mr. Chambers: What about Brewer. Brewer is Norfolk City and Norfolk City had taken steps to desegregate teachers. The court said that it simply had not done enough.

Court: I don't know the cases well enough to stand you down on it but I'm puzzled about the state of the law and I'm also puzzled about the practicalities of

Colloquy

it in Charlotte for us to worry about this subject when we've got more fundamental things to worry about.

Mr. Chambers: Your Honor, I think this is very fundamental and really we hadn't pursued it that much because we felt the statistics here were clear enough to show something had to be done. The Table 1 sets out the amount of integration of teachers in the system and, although I am sure Mr. Barkley would probably disagree, I submit that they haven't done what the court [445] required. I submit further that contrary to their table, their Exhibit #2, that rather than have the increase in teacher desegregation here, they have had decrease in teacher desegregation and the courts have clearly pointed out and this was required in 1965. The HEW requirements said in 1966 specifically that you should have two teachers of the opposite race in each school.

Court: You're not citing HEW requirements, whoever they help, as being the law in the case, are you?

Mr. Chambers: This has been one of the standards that the courts have required and there have been several cases where the courts in 1966-67 were requiring at least two teachers of the opposite race to each school. Now the courts are requiring complete desegregation of teachers for 1969-70 and that certainly means more than one or two teachers of the opposite race to each school.

Court: What's a case where I could look and read some law on that point?

Mr. Chambers: Again, Bowman is one case. United States vs. Jefferson is another case and I think that Bradley vs. City of Richmond is another

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case. I think that two cases out of Arkansas are other cases. I was just trying to think of the names of them offhand. Kemp vs. Beasley and Kelley vs. Altheimer.

【446】 Court: The Fourth Circuit cases were Charles City and Brewer and Bowman.

Mr. Chambers: The Fourth Circuit cases are Brewer vs. Norfolk City, Bowman versus New Kent County. These are the more recent cases.

Court: Where in this file is the motion or pleading in which you cited several of these cases? I've forgotten. Was this in the motion filed last fall?

Mr. Chambers: We filed a motion but I don't know what paragraph it is.

Mr. Waggoner: If the Court please, the motion for further relief, in Paragraph 2 are a list of the cases.

Court: I found them. Go ahead.

Q. Dr. Self, would you look at Table 9 containing Plaintiff's Exhibit 1? A. Yes.

Q. I note that in 1965-66, for example, you hired 12 new teachers all Negro and assigned them to the Alexander Street Elementary School. A. Mr. Chambers, I believe this table reflects all of the staff people assigned to Alexander Street Elementary School and other schools. They would not necessarily be newly employed.

Q. Well, all staff assigned for 1965-66 would be 12 Negroes? A. That's correct.

Q. And 13 for 66-67? 【447】 A. That's correct.

Q. And looking at Table 10 for Alexander Street I think for 67-68 you hired two new teachers, all Negro. A. That's true.

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Q. This pattern seems to follow throughout for 67-68 and 68-69. A. Yes.

Q. Would you explain to the Court, Dr. Self, why the substantial majority of the new Negro teachers hired would be assigned to Negro or predominantly Negro schools? A. I'll say that it's probably because of the role of the principal in the employment of staff.

Q. Would that same thing be true for the white teachers hired for 67-68 and 68-69? A. It's probably true.

Q. And your present teacher compositions in the school are set out in Table 1 in answers to interrogatories. A. That's correct.

Q. And I think also, Dr. Self, you have testified at one time that you have had and allowed for 1967-68 and 68-69 freedom of choice among teachers. A. I don't believe it could quite be called freedom of choice. There are three parties to a transfer of a teacher in the school system, the sending principal, the receiving principal and the teacher herself and there must be concurrence along the way on the part of all three for a transfer to be effected.

【48】 Q. Do you give some consideration to the choice expressed by the teachers? A. Yes.

Q. In most instances the white teachers have preferred white schools and the Negro teachers Negro schools. A. Yet.

Q. I think also, Dr. Self, that after '65 and the court order where you were required to assign some Negro teachers across racial lines and white teachers across racial lines that some teachers so assigned have gone back to schools of their race. A. I did not know of the circumstances but I would suspect that's true.

Q. Finally with respect to teachers, how much integration of coaching staff do you have in the City? A. Very

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little of that at the present time. I think there was some integration at Quail Hollow but I don't believe that that's true this year.

Q. You don't have a Negro on the coaching staff of Myers Park, do you? A. I don't believe so.

Q. You don't have a white coach on the coaching staff at West Charlotte, do you? A. No.

Q. I believe this is about true of the other high schools in the system, isn't it? [449] A. Yes.

Q. It's also true of your junior high schools, too, isn't it? A. Yes.

Q. Why, Dr. Self, would you not have any integration of coaching staff? A. I would say because of the role again of the principal and the athletic director that they play in the selection of coaches and because of the fact that there is very little change in these positions from one year to the next.

Q. Dr. Self, if you have assigned teachers in the past on the basis of race and if this has been reflected in your statistics, what have you done to disestablish the old effect of past racial discrimination? A. We have attempted to influence the principal's judgment in selection of his staff. When the schools that were referred to in previous testimony were closed we insisted these teachers be reassigned to existing vacancies before a newly employed teacher could be assigned.

Q. Is that the extent of it? A. Our work with the principals has been to use what I would term serious persuasion.

Q. The success of your work thus far is reflected now in Table 1 in answers to interrogatories? A. That's correct.

Q. Do you have, Dr. Self, any plans now for complete desegregation [450] of teachers in the school system? A.

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We plan to continue to attempt to desegregate staff in the way we have in the past.

Q. Do you have any time schedule for when you will complete it? A. No, sir.

Court: What do you call complete desegregation, Mr. Chambers?

Mr. Chambers: Now pending before the United States Supreme Court is a case that challenges the requirement that the percentage of teachers at each school reflect the percentage of the race of the teachers in the system as a whole. Since the record here indicates that there are 25% Negro teachers in the system, we contend that the complete desegregation of teachers in the system would require 25% of the Negro teachers in each school in the system. There are several decisions now so holding and have said that there should be no greater variation than 10% either way.

Court: What is the closest to this that the Supreme Court has ever come?

Mr. Chambers: The Supreme Court itself has not, as I understand it, yet defined exactly what complete desegregation would mean in terms of teachers. That decision won't even be argued until the fall term, but there are decisions in the Fourth Circuit, decisions [451] in the Fifth Circuit and there are decisions in the Sixth Circuit that set out what they hold to be complete desegregation and that is that the percentage of Negro teachers in each school reflect the percentage of teachers in the whole system. It has been held in this circuit.

Mr. Barkley: What case?

Colloquy

Mr. Chambers: Brewer vs. Norfolk School System. Check the citation in the case of Kier.

Court: I didn't read anything like that in Brewer.

Mr. Chambers: Brewer cites the case of Kier. Kier holds specifically that that is the standard that is required. That's in the Fourth Circuit out of Virginia. It is a District Court case. The Fourth Circuit cited it with approval.

Court: Well, you've answered my question as to what you mean when you're talking about complete desegregation. For convenience of description you just take the mathematical approach towards the racial composition of the community.

Mr. Chambers: Your Honor, I think there has to be some beginning point.

Court: I'm not fussing about the approach you're taking, I'm trying to get in my head what you're saying. Now I understand what you mean when you use the words. [452] This makes it a purely accidental figure which is dependent on where the school lines happen to lie at the particular time.

Mr. Chambers: Not with respect to teachers, Your Honor. Teachers are assigned by the Superintendent and they can be assigned by contract to any school in the system.

Court: It means, for example, that if the county north of Interstate 85 were one district and if First Ward were another, each of those would have a totally different kind of constitutional obligation.

Mr. Chambers: No, Your Honor, we are talking about the school system as a whole and not a district within a school system.

Dr. William C. Self—for Defendant—Cross

Court: You say the Constitution requires that we apply a mathematical rule to the ratio of the people who live in the particular political subdivision that constitutes the school system.

Mr. Chambers: I'm saying this, Your Honor, the school system could have 50% Negro teachers in the system. If it did, each school in the system should have 50% Negro teachers. It could have 10% Negro teachers in the system. If so, each school should have 10% Negro teachers. The approach of the courts has been that once they reach this situation, it then proceeds to [453] employ and assign teachers without any consideration of race and then in one year, two years you might have a situation where a system has 10 or 15%.

Court: Go ahead.

Q. Dr. Self, yesterday you indicated that you had approximately 5800 professional and non-professional staff in the system. A. That's correct.

Q. I assume this non-professional staff would also include janitors. A. Yes.

Q. Excluding janitors in the system, approximately how many of your total professional and non-professional staff would be Negroes? A. I think the 25% figure you find in the professional staff would probably be true in the non-professional.

Q. That's your best approximation? A. It's an approximation only.

Q. Now, I think you indicated that you have approximately 25 new students per year in the system. A. 2500, yes.

Q. Which means that you are building approximately

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how many schools a year, Dr. Self? A. Well, I think at one time we reduced that to a classroom figure of about 80 or 90 and that, I think, represents the amount of building that you'd need to house the additional [454] enrollment. But at the same time you need to try to catch up in terms of the older buildings, replace some of the outmoded facilities, that sort of thing, so that the amount of building will exceed the number of classrooms that you need to house your new pupils. Last year, for example, we opened 256 classrooms.

Q. Do you average approximately 250 classrooms a year? A. No, sir, that was an unusual year.

Q. What would your average be, approximately 200? A. No. I'd say a probable average would be maybe 130 for the past three or four years.

Q. 130 new classrooms a year? A. I believe so.

Q. Now, how many, classrooms do you average per school, Dr. Self? . . . or try to average for elementary schools. A. Elementary schools I think would be around 24.

Q. For high schools it would be what? A. We go by housing capacity here. Usually you think in terms of an optimum size of 750 for junior high schools and somewhere around 1250 and up for senior high schools.

Q. What is your preferable land acreage for junior and senior high schools? A. We have a rule of thumb figure of 15 acres for elementary, about 25 for junior high and around 40 for senior high.

Q. How many do you project for Second Ward? [455] A. I believe that with the acquisition of surrounding land from urban redevelopment we will have somewhere around 10 to 12 acres.

Q. Now, Dr. Self, you introduced several exhibits yes-

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terday. #2 was a summation of integration. Do you have that exhibit before you? A. Yes, I do.

Q. Now, you give a figure in your total down here that pupils in 1965 you had approximately 24% attending integrated schools. A. That's correct.

Q. And in 1968 you have approximately 77%? A. That's correct.

Q. How do you figure this, Dr. Self? A. I believe I stated in my testimony, Mr. Chambers, that where there was any incident of integration we counted the school. For example, at Bethune in 1965 there were 9 white pupils and 343 Negro pupils, producing a total of 352 pupils who were encountering integration in one form or another. That 352 was contained in the ultimate total of 17,274 and counted in the percentage of 24%.

Q. So that if your school has just one student of the opposite race you count that as an integrated school. A. That's right.

Q. And I think you were doing the same thing with respect to teachers. [456] A. That's right.

Q. So in the situation where you have one Negro teacher and 32 white teachers you count this as an integrated school. A. As an integrated staff, yes.

Q. And you say that 33 teachers are in an integrated situation. A. Yes.

Q. Dr. Self, you said the other day that you stopped counting percentages of teachers like 32.2 or 32.3 pursuant to the regulations of HEW for 1968-69. A. That's right.

Q. Did HEW have a regulation relative to how you count an integrated school situation? A. I don't believe that they did initially but I believe that the forms now require, you are now instructed not to count the floating teacher or the teacher who serves more than one school.

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Q. What about students? A. There are no regulations in regard to the students as I know of.

Q. Dr. Self, isn't it true that HEW itself says that if you have just one Negro student in a school with three hundred and some white students that you do not have an integrated school?

Mr. Waggoner: If the Court please, we object to that, what HEW has to say about this. These are matters that will speak from the record if they are competent in any [457] way.

Mr. Chambers: He certainly testified what HEW required about teachers.

Court: Objection overruled.

A. I do not know the answer to your question.

Q. You are now required, are you not, Dr. Self, to submit a report to HEW on the racial composition of students in the school system? A. Yes.

Q. Did you file such a report? A. Yes.

Q. In your computation are you required to indicate those schools that are integrated and those that are not? A. We are required to list the number of pupils in the student body according to race but I do not know that you are required by the form to indicate whether the school is thereby integrated.

Q. Now, Pages 3 and following on your Exhibit 1 would indicate the racial breakdown by schools. A. Yes.

Q. Dr. Self, would you call Second Ward integrated with 1139 Negro and 3 white students? A. I wasn't attempting to define, Mr. Chambers, whether the school was integrated. I would say, though, that those pupils were experiencing some degree of integration.

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【458】 Q. Would Second Ward be racially identifiable?
A. I'm sure that it would be.

Q. Now, looking at your Exhibit #3, this shows all the money paid to each school for salaries. A. That's correct.

Q. And you get your average by dividing the total number of employees into the amount paid. A. That's right.

Q. Would you say that the average student at Bethune was receiving \$671.05 per pupil? A. Yes, in terms of payroll.

Q. What about in terms of the actual amount paid per pupil?

Court: What exhibit are you looking at now?

Mr. Chambers: Defendant's Exhibit #3.

Q. Dr. Self, what I'm getting at, you have to show more than the total salary paid to the school, don't you? A. In terms of coming up with a per pupil expenditure, yes.

Q. This doesn't reflect very much, does it? A. It reflects only the salary.

Q. Now, going back to Exhibit #3, I believe this also includes the Federal moneys that are appropriated to each school to be included in salaries. A. You would find some Federal moneys in this, I'm sure. For example, Bruns Avenue has a teacher employed to implement the IPI, Individually Prescribed Instruction Program, so that her
【459】 salary would be reflected there.

Court: These averages are per month payments to teachers?

A. Yes, Your Honor.

Court: Is that twelve months or eight?

Nine and a quarter months for teachers.

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Q. Looking at your Table 3, this shows the total or average number of books per pupil at each school in the system A. Yes.

Q. It doesn't show how many of these books were purchased by Federal funds. A. It does not. It would show the number of books purchased with all funds.

Q. This document also doesn't show very much either, does it, Dr. Self? A. It shows the number of books per child in each of the libraries in the school system.

Q. This estimate was made by the Director of Library Services? A. That's correct.

Q. Does it include magazines? A. No, it does not.

Q. Does it include supplementary reading material? A. No, sir.

Q. It doesn't indicate the kind of books that are there. A. No.

【460】 It doesn't indicate whether all the books are encyclopedias or some other texts. A. Encyclopedias I don't believe would be counted in this.

Q. It doesn't include textbooks. A. No.

Q. Now, going to your Exhibit 5, which shows the per pupil value of facilities. A. Yes.

Q. This doesn't show very much either, does it? A. It shows just what it claims to, Mr. Chambers, the facilities value per pupil.

Q. Based on the estimate given by the principal of each school. A. And I don't think there is a great deal of fault in that figure. We did admit yesterday, however, that the number of pupils in the school might influence the assessed valuation per pupil since that was used in the computation.

Q. Would you think, Dr. Self, would you state for the

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record that the average per pupil value of the facilities at Fairview is \$61,000.00! A. Yes, at the present circumstance, but it's because of the diminishing enrollment at Fairview Elementary School.

Q. While the average per pupil value at Myers Park is \$650.00! A. That's correct.

Q. Now, are you saying that the pupil at Billingsville has a much better facility than the pupil at Myers Park Elementary? [461] A. The table simply shows the per pupil value.

Q. Would you say, Dr. Self, that the pupil at Fairview has that much better school than the pupil at Myers Park Elementary? A. I don't make that claim.

Q. Dr. Self, do you charge fees in the school system? A. Yes.

Q. What are they for? A. For instructional supplies at the elementary level; for the rental of textbooks at the secondary level.

Q. How much are the fees for elementary students? A. I believe it's \$1.50 . . . \$1.00, Mr. Philips corrected me on that.

Q. \$1.00 for the elementary students? A. That's correct.

Q. How much for the high school students? A. These will vary. I'm sorry, I can't recall that figure.

Q. Are they \$5.00, \$20.00? A. It's \$7.50, if I'm not mistaken.

Q. Does anyone know the facts? A. Dr. Hanes would know, I believe.

Q. Dr. Self, what is the percentage of the collection of these fees of the schools in the inner city? A. I would estimate 50%.

Q. What is the percentage of the collection of these fees of the schools in the outer city? [462] A. Near 100%.

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Q. So your white or predominantly white schools would collect nearly 100% of the fees and your Negro schools or predominantly Negro schools would collect 50%? A. That's correct.

Q. Does that reduce, Dr. Self, the instructional supplies for the Negro schools? A. It does.

Q. Does it reduce it rather substantially, Dr. Self? A. It would in terms of those schools that have that 50% collection factor.

Q. Have you seen this document over here, Dr. Self, that gives the income percentage by census tract for 1960? A. Not close. From a distance, yes.

Q. If the white would represent income from 2,000 to 399 or zero to 399 would your opinion be that the residents would be concentrated in this area? A. Yes.

Q. And this area here, 37, would be Marie G. Davis? A. Yes.

Q. And this area here, 23, would be Billingsville. A. Yes.

Q. So the schools in these areas would collect about one-half of the fee? A. As an estimate, yes.

【463】 Q. Does the School Board supplement the programs, Dr. Self, in order that they may get the instructional supplies? A. No, they do not.

Court: What are we talking about in instructional supplies?

A. We're talking about art materials, paints. We're talking about papers of all sorts. We're talking about work books, if these are used, the expendable supplies.

Court: Are these items which the State supplies to the School System or which it does not supply?

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A. They do not supply them.

Q. I believe you would consider these instructional supplies necessary or helpful in an educational program, wouldn't you? A. Yes.

Q. Dr. Self, we have received some test results in answer to interrogatories showing that students in grades 3 in some schools are reading at a level or achieving at a level of a student in grade 1 or grade 2. That situation exists in the system, does it? A. Yes, it does.

Q. I believe, Dr. Self, that the State of North Carolina supplies the basic curriculum textbook. A. That's true.

Q. What happens when a student in grade 3, or take other examples, a student in grade 6 is reading at a level of grade 3 and gets [464] a 6th grade textbook, can he read it? A. He cannot. You try to put in his hands a book that he can read.

Q. Now, how does he get it? A. From the supplementary reader collection. Hopefully in the future, with our move from a single adoption at the State level to a multiple adoption, through one of the basic reading programs which does take into account this variance in grade level, the program is to be implemented next year.

Q. Who supplies the supplementary material? A. The school purchases its supplementary material.

Q. The individual school? A. Yes.

Q. The individual school would have to take some of the money which it could do something else with and buy supplementary material for the students in these schools? A. That's true.

Q. And thereby reduces its average per pupil expenditure even more, does it not? A. It reduces it, the amount of money available, yes.

Q. So not only would the schools in the more affluent

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areas collect their fees 100%, they would also have students reading at a higher level and could use the textbooks actually furnished free by the State, could they not? A. Would you mind repeating that?

【465】Q. The schools in the more affluent areas would collect the school fees? A. Yes.

Q. They would also have, according to your test results, students reading at the grade level and would therefore be able to read the textbooks furnished free by the State. A. Yes.

Q. Your schools in the inner city collect only 50% of the school fees. A. Yes.

Q. And their students read lower than the grade in which they are enrolled. A. Yes.

Q. And they cannot use the free textbooks furnished by the State. A. To a lesser degree, yes.

Q. And they have to use what funds they do have to purchase supplementary material. A. That's right. The only thing that your analogy overlooks is that the privileged school may have a problem of supplying books for the children above the grade level.

Q. So your student in the inner city gets on an average, do they not, Dr. Self, less per pupil expenditure than the student in the more affluent areas. A. There would be less money behind the pupil for the provision of these supplies, yes.

【466】Court: When you put it altogether is there less State money expended for the children in the inner city area?

A. No, sir.

Court: Is there less local money expended for them?

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A. No, sir.

Court: Is there more money expended for them?

A. Under certain circumstances, yes.

Court: The difference is the amount of the fees that aren't collected.

A. That's one of the differences, yes.

Court: Are there other differences?

A. This matter explored in other testimony about the participation of PTA's in terms of financial support.

Q. Would there also be the difference, Dr. Self, of the inability of these students to use the free textbooks and having to use the money to buy supplementary material?

A. That is a problem but it is not a problem that is confined to the center city schools.

Court: I may not have been listening too well, but if the textbooks are free, they can't use them because they are too advanced for them, is this the point?

A. This would be the point, yes. The textbook is meant to accommodate a child at a particular level. You seldom will find a classroom where there are not variations from that particular level. These youngsters must be accommodated [467] through provision of other material.

Q. Dr. Self, in your opinion should the school system attempt to supplement the moneys available for the schools in the inner city or lower economic areas to compensate the schools for the loss of funds to be collected from the fees and the inability to use the free State textbooks? A. I would answer that yes and I think the school system has

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attempted to do something about it. It falls under the heading of elimination of school fees. We have had this item inserted in our budget in the past and have had it taken out of the budget.

Q. Do you presently require school fees? A. Yes, we do.

Q. And you don't know when, if ever, you'll be able to eliminate them. A. I don't know when but I would hope to be a little more optimistic than the last part of your statement.

Q. Now, I believe that a substantial portion of the money appropriated to the schools is also based on a per pupil basis A. Yes.

Q. In other words, you appropriate \$500.00 per pupil in each school, as an example. A. As an example, yes.

Q. Dr. Self, what is the average daily attendance of the students in the inner city schools? **[468]** A. I don't know.

Q. Is it lower, Dr. Self, than the average daily attendance of the students in the outer city? A. I'm sure that it would be.

Q. Isn't it more substantially lower than the students in the more affluent areas?

Court: Are there some figures on this subject?

Mr. Chambers: They are in the principals' final reports contained in our Exhibit 1 and in the principal's preliminary reports.

Court: Show me what you're talking about.

Mr. Chambers: This is Exhibit 8.

Court: You pick out an example of what you're talking about so I'll know what it is.

Mr. Chambers: All right. Look at Alexander Junior High School. The total enrollment is 1115,

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total withdrawal 79, total membership 1036. This shows, as I understand it, the basic average daily attendance.

Q. Is that correct, Dr. Self? A. Yes.

Court: What, the total membership?

A. No, the membership is different from the attendance. The membership, in layman's terms, is a figure which reflects the true enrollment of the school. When you are talking about total enrollment, that figure is confused by immigration and **[469]** outmigration.

Q. What is the average daily attendance here? A. Which sheet were you on, please?

Q. Alexander Junior High School. A. I can't detect from this which is the figure. I can offer this statement which might clarify it. If you're talking about per capita distribution, do you base the per capita on the attendance figure or the membership figure. The answer is membership and October 1 of the year is the day on which the membership is taken for each school. This allows the schools time to get all of their pupils in and it is the official day for logging that membership figure.

Q. That's the membership. A. That's correct.

Q. That's shown in the principals' preliminary reports. A. It would be, yes.

Court: Mr. Chambers, that sheet, if I read it right, shows an almost incredibly high attendance.

Mr. Chambers: That's Alexander Junior High School.

Court: This is the one you were calling my attention to. This shows that out of 1030 membership

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the average—well, I won't try to interpolate it now, but it looks like pretty high attendance.

Mr. Chambers: I know, but look at Elizabeth.

Court: Do you continue to make the point that average [470] daily attendance is used in a discriminatory fashion?

Mr. Chambers: I'm saying it's used in a way that deprives the Negro student, the student in the lower income areas of equal distribution of funds.

Court: I thought I heard Dr. Self's answer to be that the figures on the distribution per capita of funds are based upon the membership in the school rather than upon the average daily attendance. If that's an admitted fact, I'll forget about this and go to something else. Is that something that you take as a fact?

Q. Are you saying that the schools on the 10th day of October would indicate the membership and that was the basis you use for the per capita distribution? A. That is. Let's take, for example, library allocations. The library allocation which comes from the State will come to this school system in terms of last year's figures. It will not be enough, you see, to give the required amount on a per capita basis. We will take local funds and add to that amount of money that comes from the State and then on October 1st we check our membership and we will allocate, on a per pupil basis, to every school, on the basis of membership figure, not attendance. The money allocated at the beginning of the year is spent and presumably the supplies, whatever it is that is bought, is available to the youngsters for the entire school year.

[471] Q. That's for your capital outlay. Are all your

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expenditures based on per pupil determined that way?
A. Anything that's on a per capita basis.

Q. What about State aid, Dr. Self, is it based on the same? A. It is based on average daily membership as well. It always lags behind because the figure that is available to the State authority is last year's figure. In the meanwhile we grow by our 2500 pupils and we must take care of the 2500 pupils through the use of local funds.

Q. State aid, really, is based on average daily attendance, isn't it? Your teachers are allotted on that basis, aren't they? A. The teacher allotment formula is extremely complicated. I can't explain it.

Q. Dr. Self, you talked about some of the weaknesses in the plans that were presented by Drs. Larsen and Finger and Passey. I think you also indicated that you didn't know how you would integrate the Charlotte-Mecklenburg School System. A. That's true.

Q. Would you anticipate any plan that desegregated this system to be easy? A. No, I would not.

Q. Would you anticipate that it would have some difficulty for the School Board? A. I would.

【472】 Q. Would you anticipate that it would require some busing of students, Dr. Self? A. In all probability.

Q. Dr. Self, you talk about the mileage from one school to another. How far does the student in Northwood Estates have to travel to go to senior high school? A. Northwood Estates to senior high school?

Q. Going to North Mecklenburg. A. A good five miles, more probably.

Q. Could it be 13 miles, Dr. Self? A. I'm sorry, I don't know, but it certainly would be a good distance.

Court: Where is Northwood?

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A. Just across I-85.

Court: Out Highway 16?

Mr. Chambers: No, Beatties Ford Road.

Q. Where is your high school, on up here a bit, isn't it?

A. On the other side of the map.

Mr. Chambers: Do they go to North High School?

Mr. Chambers: North Mecklenburg.

Q. Dr. Self, how far do the students living in this district have to travel to get to Independence High School? A. Again, that's a considerable distance. It's, I'd say, 7 miles.

Q. How far do the students living in the southern part of the county have to travel to South? [473] A. A long distance.

Q. In fact, Dr. Self, wouldn't your average mileage in your districts for high schools be between 7 and 10 miles? A. Well, in that area, yes.

Q. Now, coming into the city, what is the average mileage for the student in the Garringer district? A. I don't know.

Q. Would it be about 5 miles, Dr. Self? A. The preponderance of Garringer students live in close proximity to it. However, the Garringer area does run out to the county line so there would be some students that would travel a considerable distance.

Q. I believe, Dr. Self, it runs from the inner city, the Second Ward boundary, out to the county line, doesn't it? A. Yes, I just stated that.

Q. That's about how far? A. That's a good 7 miles.

Q. Could it be about 20, Dr. Self, from the inner city to the line? A. I don't know about the inner city.

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Q. Now, if Second Ward were not located here and the students in this area were assigned to other schools, would they be going any further than the student out here going to Garringer? A. No.

Q. Would they be going any further than the student out here [474] going to Independence? A. No.

Q. Would they be going any further than the student living up here in Northwood going to North Mecklenburg? A. No.

Q. We talked, Dr. Self, about the schools of Lakeview and Hoskins being separated by Interstate 85. I believe that the boundary line for the student in the elementary district of Tuckaseegee Road crosses 85, doesn't it? A. Yes.

Q. I believe the boundary line for the students in the Newell District crosses 85, doesn't it? A. I believe so.

Q. It isn't unusual, then, for the boundary lines to cross 85, I mean it happens. A. It happens, yes. We don't like it but it does happen.

Q. I believe that the boundary line for the school district of Myers Park Elementary School crosses Morehead Street, doesn't it? A. I believe so.

Q. We have several examples, don't we, in this district of boundary lines going across major highways? A. Yes. Where we find evidence of these, it's evidence of the fact that we must get our children to fill the classrooms irrespective of the highway arteries.

[475] Q. Now, do you know of any studies that differ with you on the elementary principles that you were referring to a moment ago, that is, that the student ought to attend school near his home? A. I know of no studies.

Q. Do you know of any authorities that would differ with you on that? A. I'm sure there are plenty of authorities that would differ.

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Q. You indicated, I think, that your elementary schools are located approximately three-fourths of a mile of the outer boundaries of the district line? A. I did but I also indicated that density of population would effect changes in this.

Q. What is your opinion, Dr. Self, about students in junior high and senior high schools being transported to school? A. Transportation at that level is more acceptable in my own opinion than is transportation of elementary youngsters.

Q. Dr. Self, are several of your students in the inner city being transported by city bus line to high school? A. I don't know. I'm sure that some of them do use the city transportation.

Q. I think that several buses go out to several of the high schools to pick up and carry students, don't they? A. I'm sure they do.

Q. It's not unusual, then, in the district for the students to [476] ride city buses to school as distinguished from State buses? A. It's not unusual.

Q. I think that the Head-Start students are also bused, are they not? A. Yes, they are.

Q. They are elementary or below elementary students? A. Yes.

Q. They are sent quite a few miles to school? A. Yes.

Q. You project about six schools for this summer for Head-Start? A. Five or six.

Q. To service the whole county system? A. That's true.

Q. They are going to be bused several miles to school, aren't they? Yes, they are.

Q. These are young children? A. Yes, they are.

Q. Dr. Self, one specific, would it violate your elementary principles to pair Billingsville with one or two of those

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adjacent schools? A. It wouldn't violate my principles. It would cause a lot of problems that I would be most anxious to try to deal with.

Q. Would it violate your elementary principles to pair Marie Davis with one of the adjacent white schools? [477] A. If you could do it in such a way as to allow the ungradedness within the school it would not.

Q. You said ungradedness. A. I object to the Princeton plan. As I understand the Princeton plan it is more or less an arbitrary determination that this school will house grades 1 and 2 and another school will house 3 and 4. The present thought in elementary education is to move away from gradedness and the Princeton plan binds you to it.

Q. Would you talk about extending the boundary line of Marie Davis to cover the white school and then assign the students to it? A. If they were paired, I would prefer that technique.

Court: Do you want to play that over again so I'll know what you're saying? You say you don't like gradedness as the Princeton plan suggests. If the Princeton plan the idea of taking an entire grade from one location and moving it bodily to another?

A. As I understand it, the Princeton plan is used for bringing together schools that are far apart geographically and the idea is to transpose grade sections with school A housing grades 1 and 2 and school B housing grades 3 and 4 and school C housing grades 5 and 6, that sort of thing.

Court: And you would prefer, if that had to be done, to do it how?

[478] A. To locate your school in such a way that you have grades 1 through 4 or 1 through 6.

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Mr. Chambers: I have nothing further.

Court: Any more questions?

Mr. Waggoner: Yes, sir.

Court: Let me see the lawyers for just a minute.

(Conference out of the hearing of the Court Reporter.)

Court: I guess it's late enough to eat so let's eat.
Take a recess until 2:00 o'clock.

RECESS FOR LUNCH

Court: Defendant's Exhibit 6 received in evidence
is a five-page double-spaced typewritten writing en-
titled Facts about Charlotte-Mecklenburg schools.

Mr. Waggoner: If the Court please, Exhibit 7 is
the same as Exhibit 2 except it contains percentages
as you requested yesterday.

Court: Good. I thank you for preparing that.

Mr. Waggoner: If the Court please, we have one
additional tabulation which we will offer as Exhibit
#8 and it is entitled Tabulation of Percent Negro
of Total for Schools Enrolling Predominantly White
Pupils March 1965 and October 1968. This is a per-
centage of schools having varying degrees of inte-
gration. I'll have Dr. Self explain this.

Court: Have you got a copy of that that I can
look at?

【479】 Mr. Waggoner: Yes, sir.

Redirect Examination by Mr. Waggoner:

Q. Dr. Self, have you had an opportunity to review the
Defendant's Exhibit #8 dealing with the tabulation of per-

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cent of total for schools enrolling various numbers of pupils percentagewise? A. Yes, I have.

Q. Could you explain to the Court the information contained on this exhibit? A. This statistic presentation shows the percent of the pupil population and the professional staff which are Negro in terms of various percentage catagories ranging from zero % up to 100%. It's actually a summation of the percentages that Your Honor asked us to do on Exhibit #2, pulling them out for easier understanding.

Q. Is this based on 5% gradations? A. Yes, it is.

Mr. Waggoner: If the Court please, I believe the statement is self-explanatory unless you want to go further into this.

Court: I don't want to put you to a lot of further unnecessary work but if you have or could develop without a lot of trouble the absolute figures that would fit each one of these lines, it might have some useful purpose now or later. This is very helpful and I [480] appreciate it.

Mr. Waggoner: We would like to substitute a typed copy, this is rough draft.

Q. Dr. Self, will you take the columns entitled Pupils 1965 and 1968 and explain the meaning of the figures in those columns? A. Well, at the top of the lefthand column is the 100% Negro figure. Going down from that column you go to zero % at the bottom of the page. The first entry in the column that you referred to is 30, indicating that in 1965 there were 30 schools that were 100% Negro. If you move over to your right the comparable figure for 1968 is 17. In the 95 to 99% there was one such school in

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'65 and there are 5 in '68, and so on down through that column to right at the bottom where you have zero % Negro. That, of course, is an all white school, and in 1965 there were 63 such schools and in 1968 there are 22 such schools.

Q. So this indicates that the number of all white schools decreased from 63 to 22.

Mr. Lanning: Objection, the table is quite clear on what it reflects.

Court: Objection overruled.

A. Yes.

Q. Would you take the two columns under Professional Staff and explain the meaning of those figures? A. Comparable data is given here, comparison between 1965 and '68 [481] except that the statistics are based on the number of teachers rather than numbers of pupils. It indicates that in 1965 there were 28 all Negro schools as measured by faculty. In 1968 the comparable figure is 14. Then going to the other extreme end of the chart zero % Negro or all white, in 1965 there were 78, in 1968 there are none.

Q. Dr. Self, I direct your attention to Page 16 of the recommendations and analysis of the plaintiff's experts. As I recall, Mr. Chambers in his cross examination inquired of you as to how you might desegregate the schools located in what is called central city and listed the number of schools which indicated being nearly all black or all black.

A. I recall.

Q. I'll ask you if University Park School is listed as one of the schools that the plaintiff's experts would permit to remain segregated. A. Yes.

Q. I'll ask you if Lincoln Heights is such a school. A. Yes.

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Q. I'll ask you if Oaklawn is such a school. A. Yes.

Q. I'll ask you if Fairview is such a school. A. Yes.

Q. I'll ask you if Bethune is such a school. A. Yes.

【482】 Q. I'll ask you if Zeb Vance is such a school. A.

Yes.

Q. I'll ask you if First Ward is such a school. A. Yes.

Q. Now, referring to the schools to remain segregated predominantly white I'll ask you if Devonshire school is listed. A. Yes.

Q. Albemarle Road? A. Yes.

Q. And Beverly Woods. A. Yes.

Q. As I recall, the only other school he mentioned was Bruns Ave. and I believe you previously testified that this school encompassed an area that would have had an integrated pupil population as of 1965. A. Yes.

Q. Dr. Self, there was some discussion about the custom with reference to employment of teachers. What has been the custom with reference to once a teacher identifies in a particular school faculty with reference to moving to another school? How would that be initiated? A. Generally the move is a request to transfer on the part of the faculty member and the request, as I indicated earlier, is subject to approval by the principal of the school the teacher would be leaving and subject to the approval of the principal
【483】 to whom the transfer is requested.

Q. So then it is your custom if a teacher does not request moving she is normally reassigned to that same school. A. Yes, it is.

Q. With reference to principals, how does a principal ordinarily or how would a principal be transferred from one school to another? A. He would usually be transferred upon the recommendation of the Assistant Superintendent of Elementary Education if he were elementary

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or the Assistant Superintendent of Secondary Education if he were secondary. In general he would probably initiate the request for a change of assignment although it is quite possible for an Assistant Superintendent who is opening a new school to cast about for a person that he feels is competent to do the job and make the initiation himself.

Q. Is it the custom in this school system to employ a person just out of school as a principal of one of your schools? A. No, it is not.

Q. Where do you ordinarily find new principals? A. They ordinarily come from within the system although we are not absolutely prohibited from doing so and we have on occasion employed some principals from outside the school system.

Q. Would they be principals with teaching experience? A. Yes.

Q. Dr. Self, is the teaching assignment or principal assignment [484] normally one of long tenure barring resignation at the same location year after year? A. I'd say yes it is but it's becoming less so. I think more and more teachers are beginning to think in terms of teaching assignments that are different, recognizing the value of some change in terms of their own professional growth and development. We do encourage some change in principalships, thinking again that a new assignment, a new role, different people to deal with, brings personal and professional renewal to the person.

Q. Dr. Self, you previously mentioned that there was integration on the staff at Quail Hollow Junior High last year, is this correct? A. Yes. I think that had to do with the coaching staff.

Q. Now as I understand there were two assistant Negro

Dr. William C. Self—for Defendant—Redirect

coaches assigned to the school, is that correct? A. That's correct.

Q. Are they still at this school? A. No, they are not.

Q. Do you know the reasons for their leaving the school? A. One of the gentlemen is deceased and the other gentleman requested a change of transfer.

Q. Did he request transfer to some other school in the system? A. Yes, I believe so.

Q. Did he request assignment to a predominantly Negro staff school? [485] A. I do not know.

Q. Dr. Self, with reference to the high school attendance areas do you attempt to achieve a neighborhood attendance area for your high schools? A. I don't think it could be called a strict neighborhood in the concept that a neighborhood is a small, closely knit community. It is a section of the county very definitely, however.

Q. It would be referred to more as a geographic area, is that correct? A. Yes.

Q. With reference to collection of half of the school fees and absence of PTA contributions for the central schools, do you know approximately how much money is involved per pupil in losses that the center city may have as against the so-called affluent schools? A. At the elementary school it would be that \$1.00 fee, \$1.00 per pupil. When you get up to the junior high school your loss would be the amount of the fee that was called out by Dr. Hanes this morning.

Court: You're talking about the losses from not receiving the full fees from the students?

A. From non-collection, yes, sir.

Court: How far up do you get before you exceed the dollar?

*Dr. William C. Self—for Defendant—Recross***A. At the 7th grade level.**

【486】 Q. In the elementary schools how much loss are you talking about? A. Well, a 600 pupil elementary school would have collected \$600 and with 50% collection they would have \$300.

Q. So that would amount to 50 cents per pupil per year, is that correct? A. In terms of funds available, yes.

Q. In funds not available. A. It would be true equally either way you approach it.

Q. There was some mention of busing Head-Start students during the summertime. How many students have been involved in this program? A. I believe it's 1500.

Q. Were your school busses being then utilized in the other operations of the school system? A. Not in terms of a regular school program. Where child development centers were in operation some busses would be in operation.

Q. So this was not a time when your busses were ordinarily in other use, is that correct? A. That's correct.

Mr. Waggoner: You may examine.

Recross Examination by Mr. Lanning:

Q. Dr. Self, do you recall the age range of the children served by Head-Start? 【487】 A. These youngsters would have been entering the first grade in the regular school session following the summer program. So they would have been about five years old.

Q. Subsequent to 1965 the Board disestablished and closed several schools, did it not? A. Yes.

Q. And do you recall how many of these schools were at that time either all Negro or predominantly Negro? A. The 7 schools that were closed in the outer periphery of the county were all Negro. The 6 schools that were closed this

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past school year, five were either Negro or predominantly Negro and one was predominantly white.

Q. So you since 1965 you have closed approximately 12 all black or predominantly black schools? A. Yes.

Mr. Lanning: No further questions.

Mr. Waggoner: You may come down.

* * * * *

【544】 Monday, March 17, 1969—

Court: I suppose the best thing for us to do is to go ahead with the witness you had left to put on today and then let's talk a little among the lawyers and find out whether I've asked all the questions I should have asked.

Mr. Chambers: Your Honor, we'd like to call Mr. Yale Rabin.

Court: Would you tell me what exhibits he's going to be talking about, if any.

Mr. Chambers: He's going to be talking about Exhibits 10, 11, 16, 6, 7, 14, 8, 17, 13, 12, 15, 9 and 18. In addition we have two maps that he has prepared and some data.

Court: I believe you've got all those exhibits.

Mr. Chambers: I do and I can pass them up to the Court now.

Court: If I was going to have to find them I wanted to start looking.

Mr. Chambers: I'd like to state preliminarily that what we propose to establish by this witness is the effect of city action or activity on the racial housing pattern in the City of Charlotte.

Court: Are you going to let me know what the

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effect [545] the Federal Government action on that score is?

Mr. Chambers: We hope to show what Federal programs have been implemented here in the City of Charlotte and how the implementation of those programs has effected the racial housing pattern. We think that all of the activity we're considering here would involve both local action and local action taken in conjunction with Federally funded programs.

Court: Can you separate them?

Mr. Chambers: I don't know how much separation we can do because we're talking about urban renewal and redevelopment under the Federal program.

Mr. Chambers: We would hold that the City, in its practices, has contributed to the creation of the racial housing pattern that exists here and that because of that the School Board would have to go further than merely establish its boundary lines because the result otherwise would be the making of segregation in the school system. We are not asking for an injunction against the Federal Government.

Court: I just wanted to know what to be on the lookout for.

YALE RABIN, a witness for the plaintiff, having first been duly sworn, was examined and testified as follows:

[546] Direct Examination by Mr. Chambers:

Q. Will you state your name, please? A. Yale Rabin.

Q. What is your address, Mr. Rabin? A. 21 W. Tulpehocken Street, Philadelphia, Pennsylvania.

Yale Rabin—for Plaintiff—Direct

Q. What is your occupation? A. I am an urban planning consultant.

Q. Would you explain for the record what that consists of? A. Yes. I work on a private basis for clients, either public or private clients, in activity such as housing, urban renewal, community development, transportation planning and so on. I assist in the preparation of plans or in the evaluation of plans or in the development of alternative plans on behalf of people who are affected by planning programs.

Q. Would you give the Court your educational background? A. Yes. I have a Bachelor of Fine Arts and Bachelor of Science Degree in education. I have a graduate degree in architecture and studied City Planning at the graduate level at the University of Pennsylvania. I have taught both in the public schools following my graduation as a teacher and I have also taught in colleges and universities both here and in England on city planning and urban problems and guest lectured at various colleges both here and abroad.

Q. Do you belong to any professional organizations? **【547】** A. Yes. I am an associate member of the American Institute of Planners; member of the American Society of Planning Officials; Urban and America; Planners for Equal Opportunity; the Society for College and University Planning; Philadelphia Citizens Council for City Planning; Delaware Valley Regional Housing Association. I think that's about it.

Q. Would you give the Court your work experience? A. Yes. As I indicated at present and since early 1967 I have been engaged in private practice as a planning consultant, and prior to that I was on the staff of the University of Pennsylvania from 1963 to 1967. Prior to that. . . .

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Court: Have you got this written down anywhere?

Mr. Chambers: No, we don't have, Your Honor.

A. From 1961 to 1963 I was a planning officer for the London County Council in England where I was responsible for the civic design planning of four of London's twenty-eight burroughs and in addition I taught town planning in the graduate school at the Polytechnique there. Prior to that, from 1959 to 1961, I was the senior planner for the City of Camden, New Jersey, where I was responsible for the preparation of the municipal facilities portion of their comprehensive plan, that portion of the plan including schools and libraries and facilities such as that. Prior to that I was a student, graduate, for three years and before that a public school teacher.

【548】 Do you have any publications? A. Yes, an article called Development Control in Great Britain, published in 1966, I believe, Municipal Facilities Portion of the Comprehensive Plan for Camden, New Jersey, and a report entitled the Eviction of Negro Families in the South which was a report of the agenda planning committee of the 1966 White House Conference.

Q. Mr. Rabin, were you requested to come to Charlotte to look at the city activities as they relate to the racial housing pattern in Charlotte? A. Yes, I was.

Q. Were you requested by me to come and make this study? A. Yes, I was.

Q. Did you make this study? A. Yes.

Q. Would you tell the Court how you proceeded in your study? A. Well, I first attempted as well as. . . .

Court: When was it?

A. This was over a period of time.

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Court: When was it? When did this take place?

A. The initial request back in the fall of this year.

Court: You started to say what you did. When did you come here first?

A. I first came here in the fall, September, October. The second visit. . . .

【549】 Court: Of what year?

A. 1968. My second visit to Charlotte was in February of this year and my most recent visit this one, two days ago. I attempted on these visits to familiarize myself—

Court: How long did you stay the first visit?

A. One day, and on the second visit three days and on this visit three days. I spent a considerable amount of time driving around and familiarizing myself with the city and, in addition, I have assembled quite a bit of documentary material relating to development in Charlotte, both from an historical point of view and from the point of view of demographic data which is produced by the census, the Planning Commission, by the analysis studies which have been done here, and various other materials which I have accumulated. I guess I ought to go through and list all of these data sources. I have gone through the summary of the Model Cities application. I have reviewed the census data for 1940, 1950, 1960. I have reviewed the Greater Charlotte Plan, that is, the document entitled The Next Twenty Years; I have reviewed the Central Area Plan

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which is the plan for the downtown business district; I have reviewed the Blight Study prepared by the Planning Commission; I had had a study done under my direction by staff people at the University of North Carolina; I have obtained material from the Housing Authority, from the Relocation Officer; I have reviewed the documents on Urban Renewal, including the [550] Workable Program, and the reports of the Housing Authority to the Department of Housing and Urban Development on occupancy. I have reviewed the reports of the Relocation and highway construction over the entire period of years which that office has been in existence. Quite obviously these studies were not carried out during my visits to Charlotte. These comprised a considerable amount of time in my own office and with people working for me back in Philadelphia. So that I was able to spend as much time as I could during my visits here learning about the visual aspects of the city itself.

Q. From your study, Mr. Rabin, did you have any impressions of the effect of city activities on the racial housing pattern? A. Yes. I think there are some general observations that can be made. I think that I should first note that the activities that I looked at were certainly not all the activities. They were what we call comprehensive planning.

Mr. Waggoner: We'd like to object at this time and establish some of these documents that they are relying on as being reliable or worthy of consideration. Some we haven't seen. We really don't know what he's going to be testifying from. Can he be more specific as to the pages of these documents so that we can get to the nut of it and know what we're talking about.

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Court: The testimony is incompetent as offered unless [551] its got some justification which doesn't appear yet, Mr. Chambers. What you're doing is asking him to review a history of migration and say that it was done for foul purposes and the history of the migration, I take it, is fairly clear. Does a man who never came to Charlotte before October, 1968, have any special way of telling us the motives by which people were moved from 1860 to 1969?

Mr. Chambers: I think he is perfectly competent to testify as an expert in this case about the effect of city planning, city zoning, city activity on the housing patterns in the City of Charlotte. Of course, it is the Court's prerogative to decide whether the city has actually created the housing patterns. We are not attempting to displace the Court's opinion with respect to that. We do think, however, that his testimony as an expert on this would be competent and relevant in this proceeding.

Court: What I'm asking you to do is tell me what kind of questions you aim to put. Are you going to ask him simply to describe the physical results of what these things did?

Mr. Chambers: Basically that's correct.

Court: Because I don't see how he could do anything but say the records I have examined show the relocation of [552] people in the following ways and here's where the statistics show they live now.

Mr. Chambers: That's true, and how they zoned various areas of the city and where the proposed streets are to be placed and where public housing are located, all of this data is taken from material furnished us by the appropriate officials of the City of Charlotte.

Colloquy

Court: Well, the reason I interrupted is this, if we go by any standard of evidentiary competence Mr. Rabin will have to testify not as an expert on the points you are seeking to make but simply making a concensus of a lot of statistical material.

Mr. Chambers: We expect to go further, Your Honor, and ask his opinion on the effect of the zoning on the racial housing pattern, the effect of the city planning on the racial housing pattern, the effect of the relocation on the racial housing pattern, the effect of the location of public housing, the effect of the streets on the racial housing pattern and we think that he is competent to testify to that. This is true although he came here for the first time in October, 1968. That is the purpose for calling Mr. Rabin in rather than calling an ordinary layman in the City of Charlotte.

Court: It may be a play on words, talking about effect and result.

【553】 Mr. Chambers: Since the Court is sitting without a jury, would the Court hear us and then decide subsequently whether it wants to consider some of the evidence relevant?

Court: I think that's what I've got to do. Are you seeking to show that the effect of all the money the Federal Government spent on relocating people has been one of racial discrimination?

Mr. Chambers: We are seeking to show that in relocating people the City of Charlotte has further segregated the people in housing and, if necessary, with Federal money.

Court: You jumped the track if that's the case.

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Mr. Chambers: Again, Your Honor, we're going to the same point that the court referred to in the Norfolk school case. If this pattern has existed in the City of Charlotte, the School Board is going to have to do something else to desegregate the schools in the system. We are not seeking in this action an injunction against the city zoning.

Court: Mr. Lanning on Thursday didn't want to tell me what that something else was. Are you prepared to tell me what you want the Board to do?

Mr. Chambers: Your Honor, we submitted three plans, any one of which might be modified by the School Board. [554] My preference would be four schools serving all the students in the school system. That's my preference and I don't speak as an educator. That's why we tried to get someone who knew a little more than I did what ought to be done and there is available to the school system the agency under Title 4, and to the Court.

Court: What is that?

Mr. Chambers: An agency that will assist the Court in designing a plan that should be implemented in the City of Charlotte.

Court: You're not making any recommendations to the Court yet, are you?

Mr. Chambers: We made four recommendations with Drs. Larsen, Finger and Passey.

Court: You go ahead. This is only the second case I've ever tried when lawyers never would tell me what they wanted the Court to do.

Mr. Chambers: I'll tell you what we want you to do but I don't presume to be an educational expert and we tried to call some people to show different

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alternatives. Really it isn't our responsibility to design the thing, it's the School's Board's. We just drew up some possibilities that could be considered by the Board in designing what plan it ought to bring in.

Court: What I'm going to try to do is to hear whatever [555] he says, not in terms of expert opinions because in my mind recent history is not a matter of expert opinion. But I'm going to try to listen to him for the purpose of trying to get information about what the result of various governmental actions has been. You can ask questions going beyond that if you like but I don't believe I've got any business considering opinion as to why folks did this.

Mr. Chambers: Your Honor, we would tender Mr. Rabin as an expert and maybe in our examination the Court will see why we're talking about recent history. That's why I request you to let us show what we're trying to show and decide whether it ought to be admitted.

Court: Go ahead.

Q. Mr. Rabin, you were giving us your general impressions of the city activities on the housing pattern. A. Yes. I think, as I said, first I should describe what the activities were, what I looked at. I didn't look at all the activities of local government.

Court: I don't want general impressions. I thought we were going to have someone to testify about factual conclusions based upon statistics applied. General impressions, this is just preaching and preaching is good for many purposes but it doesn't help to decide a question of this sort.

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【556】 Mr. Chambers: Your Honor, I think this could properly be defined as his opinion.

Q. Why don't you give us your opinions, then, Mr. Rabin?

Mr. Waggoner: If the Court please, we object.

Court: This is not the point, Mr. Chambers. The witness can help the Court by describing in detail the history which he has read from the books because it's fairly voluminous, but drawing some olympian opinion why all this was done or what the overall effect of it has done is not something that helps at all.

Mr. Chambers: What we're trying to show at this stage is an outline of the effect of the city activities in the areas he's going to talk about on the racial housing patterns in the City of Charlotte and I submit that he is perfectly competent to testify.

Court: The evidence as solicited by that question is incompetent and I believe I have indicated what I believe is an approach you can follow that will help the Court. Somebody simply giving abstract opinions about this doesn't help me a bit, but if you want him to review these exhibits in detail and indicate that he knows more about them than we do, that will help me. But simply somebody drawing conclusions from the hasty review of the mass of data like this, this doesn't help the Court in any question that the Court's got to decide.

【557】 Mr. Chambers: First of all, we would say it wasn't a hasty review that Mr. Rabin made but in view of the Court's feeling that we ought to go into detail about the facts, we will go into detail about the facts. We were just trying to set up a

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pattern for how we were examining the witness and trying to set some outline for the Court to follow, but we will go into details on the other matters.

Court: If he can summarize these exhibits, which I hope he can, in a factual manner, this would be helpful, but I don't think impressions or general opinions is going to be helpful at all, in addition to which they are totally incompetent from an evidentiary standpoint.

Q. Mr. Rabin, would you describe for the Court what areas of city activities you considered? A. I looked at city planning, comprehensive planning, zoning, urban renewal, public housing construction and highway planning and construction.

Q. What did city planning consist of? A. As I indicated earlier, in city planning I looked at plans and documents prepared by the Charlotte-Mecklenburg Planning Commission. These consisted of the document entitled The Next Twenty Years, which is the comprehensive development plan; the plan for the greater Charlotte central area, which is the downtown business district development plan; a document [558] which I believe is entitled Blight in Charlotte. Anyway, it is dated September, 1962, and it's one of the exhibits.

Court: What was the title of that?

A. Blight in Charlotte. It's the second document from the top there. I examined these documents, the proposals they made in relation to the distribution of residents by racial groups and the changes that took place in that distribution as revealed by the United States census, the analysis

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survey which was taken here during the past year in Charlotte. Now, if I might refer to those . . . also, Your Honor, may I point out the very specific relationship between these activities and schools?

Q. We'll come into that, Mr. Rabin. First of all, is this document Plaintiff's Exhibit 12 the one you referred to as the city planning for the next twenty years? A. Yes.

Q. Now, does this document contain a map that you also considered? A. Yes, it does.

Q. And what is the map entitled? A. The map is entitled General Development Plan and it summarizes pictorially the recommendations of the plan.

Q. Can you explain for the record the coloring of the map? A. Yes. The yellow areas depict the recommended areas for residential development; the green areas the major public and semi-public uses; the pink areas office-institutional; the deep red area the central business district; the bright red, [559] the general business and the blue areas commercial-industrial; and then there is a designation for flood plain areas.

Q. Now, the document you referred to as Residential Blight is Plaintiff's Exhibit 15. Would you explain for the record what this document shows? A. Yes. This document, which is dated September, 1962, describes each census tract within the City of Charlotte as of the date of the document and contains information each census tract on housing conditions, present and future land use and zoning, the tenure and race of the residents living in each census tract and the existence or non-existence of overcrowding and poor streets within each census tract, and then each one contains also a general description of the character and development of the tract itself.

Yale Rabin—for Plaintiff—Direct

Court: Who prepared this Blight in Charlotte?

A. The Charlotte-Mecklenburg Planning Commission.

Court: That's Exhibit 15!

Mr. Chambers: Exhibit 15.

Q. Looking, for instance, at Census Tract 4 on this exhibit, what is this census tract depicting at the top of the page 12 for Census Tract 4? A. It shows housing conditions as they existed at the time of the publication of this study within that census tract.

Q. What does the bottom census tract show on Page 12 of Census Tract 4? [560] A. Present and future land use.

Q. What does the top census tract on Page 13 of Census Tract 4 show? A. It shows the tenure and race of the residents in the census tract as of the time of the study.

Q. How does this tract show the race of the residents? A. Those residential areas which are predominantly occupied by non-whites are bounded by a red line.

Q. That goes around the streets of the non-white residents? A. It goes around the area which is occupied by non-whites.

Q. What does the bottom census tract on Page 13 of Census Tract 4 show? A. It shows overcrowding within dwellings and shows the location of inadequate streets.

Court: How do they define inadequate streets?

A. The definition is given here as streets of inadequate width.

Court: Like the main streets in Philadelphia?

A. There are some narrow streets downtown.

Yale Rabin—for Plaintiff—Direct

Court: What's the name of that street that runs along parallel to the big one? What's the name of the big hotel towards the east?

A. Bellview-Stratford.

Court: The one about six blocks east of that?

A. Ben Franklin.

Court: What's the name of that street that runs in [561] front of the Ben Franklin?

A. Chestnut.

Court: That's an inadequate street, I reckon.

A. Not by these standards. This is 30 feet or less. This is very inadequate and that is only a little inadequate.

Court: Is the street in front of the Ben Franklin Hotel 30 feet wide?

A. Oh, yes. When they say width of street they are talking about the distance from property line to property line, not the width of the actual carriageway.

Court: I just wanted to know if you've got one standard for middle-sized cities and one for big cities.

A. This standard is not mine. This standard which I am describing is the standard used by the Charlotte-Mecklenburg Planning Commission which is streets rights of way of 30 feet or less. I don't know whether it would be the standard I would use.

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Q. In connection with city planning, did you consider any other document? A. Yes. I considered the Greater Charlotte Central Area Plan which is a more detailed version of the section on central area which appears in the plan entitled The Next Twenty Years.

Court: Unfortunately that never rose to the level of government action, did it, Mr. Chambers?

Mr. Chambers: I don't think it did, Your Honor. There were some variations approved in the bond issue of [562] 1967 or '68. We'd like to mark this as Plaintiff's Exhibit 40.

Q. Mr. Rabin, in looking at those documents would you tell the Court what those documents show factually? A. They show the proposals which the Planning Commission had developed for the use of land within the area covered by the plan and, quite obviously, we all recognize that plans have no controlling force, that is, these are recommendations for the use of land in the area. The only elements of the plan which develop any compelling force are those elements which relate to facilities or land uses which are normally provided by government, things such as roads or public building. Quite naturally the development of residential or industrial land is subject to the decision-making of private developers within, of course, whatever the other legal constraints are which the city imposes. But the plan very definitely sets a direction in the recommendations which it develops and it's those recommendations which are particularly significant in this case.

Mr. Waggoner: If the Court please, we object and move to strike his answer. This is an area of

Colloquy

speculation. Various committees meet and make recommendations and they may gather dust on the shelf. If any of the material is pertinent it would be the official action adopted by some governmental body.

[563] Mr. Chambers: Your Honor, first of all I disagree very much with Mr. Waggoner's position, but we would like for the Court to just let us go ahead and develop the case and then decide whether you want to admit the evidence or not. I submit that if the City of Charlotte has an official body called the City Planning Commission and it works, then this is the action of the City of Charlotte. Any agency of the City of Charlotte is an agency of the City of Charlotte and the City of Charlotte is responsible for its activities, and what it plans or what it says is competent with respect to what the city proposes to do or has done.

Mr. Barkley: The city is not responsible unless it adopts it.

Court: What is the legal basis upon which you are contending that the action of unofficial planners for the City of Charlotte or the Federal Government is binding upon the School Board?

Mr. Chambers: I contend that on the basis of the Brewer case and on the basis of Green and on the basis of Rainey and Monroe.

Court: There is some language in Brewer, the second opinion, one of those sort of rush block problems nobody has ever decided to which you have to elaborate rightfully to get to the point you're making here. **[564]** Has there been any case that ever addressed itself to that subject? I'm not asking you

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to tell me how much new ground you're setting out to clear.

Mr. Chambers: Your Honor, the one case that approached it somewhat was the case out of Duval County, Board of Public Instruction of Duval County versus Braxton.

Court: They didn't hold anything that would support this contention, did they?

Mr. Chambers: The question there concerned the use of school district lines in the racial housing pattern situation. The Fifth Circuit has had several cases on that. The Fourth Circuit's most recent opinion was in the Norfolk School case.

Mr. Barkley: In Brewer case, as I recall, they adopted the city precinct plan for their lines.

Mr. Chambers: I submit that if the Court finds there has been public or private discrimination in the development of the housing pattern, something else has to be done. I submit that that was not just thrown into the opinion just to be thrown into the opinion.

Court: It was thrown in just to keep the question open, as I read it. Is that the only authority on this subject. I just wanted to know what you think of your legal position here.

Mr. Chambers: I think our legal position goes back to [565] 1954 when the court was talking about separate but equal. At that time it was clearly talking about compulsory segregation of the students in the schools. In 1968 in the Rainey case and the Green cases the courts are talking about other factors which make for continued segregation of students in the schools and it is binding on the School

Colloquy

Board, whether it is action of the city, action of private individuals or what have you, all of these actions have to be taken into consideration by the Board in designing the plan it tries to implement and it has to establish to the court's satisfaction that the plan it's proposing will eliminate black and white schools in the system.

Court: So what you're really saying is that you want the Court to hold that any predominantly black school in Charlotte is unlawful.

Mr. Chambers: That's correct, and any predominantly white school.

Court: What would be going pretty far, wouldn't it?

Mr. Chambers: I don't think so, Your Honor.

Court: Has anybody ever held that?

Mr. Chambers: The Court might differ with me but that's the way I read Green and that's the way I read Rainey and Brewer. Your Honor, I think really we have to go back and look at the whole history of school [566] desegregation. We started off talking about state constitutional provisions requiring separate schools. We then get into public accommodation and we strike that down because that continues segregated schools and then we get into freedom of choice and we strike that down because that continues segregated schools. We then begin to look at all the other factors.

Court: Why did we strike down freedom of choice?

Mr. Chambers: It has been outlawed where it does not eliminate the all black and all white schools.

Court: There have been statements and opinions, as I read them, where freedom of choice with a view

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to perpetuate segregation won't stand. We all agree with that. If there are elements of that result in the freedom of choice plan here, they need to be explored.

Mr. Chambers: It says more than that, Your Honor. Rainey wasn't dealing with freedom of choice necessarily. These cases are looking at what the Board comes in with. Anything that perpetuates a segregated, all black or all white school, is unconstitutional.

Court: Well, is your theory dependent upon some improperly motivated decisions by the city ten or fifteen or twenty years ago?

Mr. Chambers: It would be effected by it, Your Honor, because whatever housing pattern results from the action [567] of the city must be considered by the School Board in designing the plan it proposes to follow.

Court: Is the purity of the motives a factor in your problem?

Mr. Chambers: I'm not questioning the motives, Your Honor, I'm questioning only the results.

Court: So you say that if a thousand black families decided to build a school on an island in the Catawba River the School Board would have to provide for that island a school with 70% white and 30% black students?

Mr. Chambers: Is the Catawba River in Mecklenburg County?

Court: Half of it is.

Mr. Chambers: Your Honor, I'd say that under Griffin and under the recent Supreme Court decisions it would have to do that. And I go further and

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say either we're going to do that or provide a separate school system for that island in the Catawba River and let them have their own system.

Court: I don't suggest you start that.

Mr. Chambers: I'm not suggesting that, I'm saying that this is what we're going to unless we are doing something about it.

Court: This would be the easiest way to avoid all responsibility on the part of the citizens of [568] Mecklenburg County.

Mr. Chambers: That's correct, Your Honor.

Court: Well, I think the best way for us to get through with this witness this week is for me to hear whatever you want him to say with your understanding that I don't see very much of what he can say is going to help me nor be competent for me to consider. But if he can provide a road map through these exhibits, which the question suggests that he really can, he can be helpful. I'm just going to tell Mr. Waggoner to let's listen to it all and I'm going to have to listen to it with a very jaundiced ear because I'm having trouble seeing where it can be properly considered except as it marshalls the facts and figures, instead of simply opinions.

Mr. Chambers: We hope to submit a brief to the Court following this hearing where we will try to show the relevance of his testimony to the proceeding.

Court: Mr. Waggoner, if you withhold your objections and I'll withhold mine and we'll find out what Mr. Chambers wants to get from the witness. But you have the right to take objection and exception to the evidence that is incompetent. If you wish, you can make objections as you go and I'll just over-

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rule all of them and we'll get along with the testimony.

【569】 Q. Mr. Rabin, we were looking at the city planning and you were giving us what the city planners were proposing. A. Yes. This map here, I'd like to refer to the map which is in the back of the plan entitled *The Next Twenty Years* and which summarizes the proposals made in the plan. This map should actually be looked at in comparison to a map which appears on Page 16 in the document itself because the comparison of these two maps indicates the major kind of change in land uses within the planning areas that are recommended. The map on Page 16 shows existing and proposed industrial land. The existing industrial areas are shown in a deep brown color and the proposed industrial lands are shown in a light brown color. Now, this is the same land which is shown in a deep blue—both of these together—on the large map which is contained in the back of the book. Looking at the small map one immediately sees that the volume of industrial land, which it is proposed to develop, is several times the volume of existing industrial land within the county. Now, I am in no way questioning the decisions which led to the determination of the amount of land needed. I am just pointing out that the amount of industrial land called for is several times, perhaps five times the amount of industrial land now in use within the county. The next things I would point out are the sections of the city from which this proposed industrial land is to be taken. Almost entirely this industrial land is taken out of 【570】 what might be called the western half of Charlotte. Now, since I am going to refer to this division again I am going to be specific about what I'm using as a line. I am

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saying that beginning on North Tryon . . . do you want me to show this on a map?

Court: No, I can hear it.

A. Running down Tryon into the center to the point near where Tryon Street is near the line of the Southern Railway, south of the very center of town, and then proceeding along the line of the Southern Railway out of the city in that direction, that I have used this line to distinguish between what I shall call the eastern half and the western half of Charlotte. This proposed industrial development does two things. One, it creates a wide belt of industrial land separating the two halves. This belt of land runs entirely through the city, separating the two halves, and the other thing that it does as I indicated earlier, was to take substantial areas of land which are already in use as residential areas from the western portion of the city. Now, it was noted before that this has no compelling force. I want to point out as I go along that this has been formalized by a zoning ordinance, but this precedes the 1962 zoning ordinance. This planning document was developed in 1960 so that this is the major impact. The secondary effect of this document is to outline the proposed interstate highway system and the major [571] arterial streets in the Charlotte area and again one can see that the major north-south route -I-77—tends to reinforce this north-south division by running adjacent to and parallel to the industrial band which runs through the city.

Q. Mr. Rabin, from your study, so that we can keep the record clear, what is the racial composition of this western half that you're talking about? A. Well, in general it is the area in which Negroes live.

Yale Rabin—for Plaintiff—Direct

Court: What time are you talking about now?
Mr. Chambers: Today, 1968.

A. In 1968 this is the general area of the city in which most or almost all Negroes live.

Q. What is the racial composition of the eastern area?
A. The racial composition of the eastern area is predominantly white with the exception of the one area Griertown which is in the 24 census tract.

Q. Did you notice anything about the proposed zoning for the Griertown area? A. Well, yes. I think that within the city the only industrial land proposed on the eastern side is on the northern edge of Griertown.

Q. What is the effect of this industrial zoning on the northern edge of Griertown? A. This is not zoning we're talking about.

Q. Proposed zoning. [572] A. This proposed use of land, if implemented, would create a barrier. It would create a zone of non-residential use, a zone of adverse use certainly adjacent to a residential area between Griertown and the area to the north.

Q. Would those areas to the north be white or Negro?
A. They are at present white.

Q. You indicated that the proposed zoning would displace the present residential areas with industrial zoning?
A. The land which is proposed to be used for new industrial development consists in large part of land which is presently developed and occupied residentially. That is more clearly shown in this document, which takes on a tract by tract basis the present uses of land and describes this in comparison to their future zoning. If we go to the tract which you referred to just a moment ago, Census Tract #4 which is on Pages 12 and 13, one can see that. . . .

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Court: What part of town is Census Tract #4?

A. I have to have a good look at a map.

Court: Can you read the names of some of the streets in it?

A. Most of it is west of Tryon Street.

Mr. Chambers: That's South Graham Street, South Tryon Street, over to. . . .

A. Most of it is on the west side of Tryon and a bit of it. . . .

Court: How far north does this go?

【573】 A. A bit of it goes up to Second Street and the southern limits are Summit Avenue and Park Avenue.

Mr. Chambers: Some of it goes up as far as 7th Street, this area here. Down here it's 2nd Street.

Court: This is an area south and west of the Square starting along 2nd Street and running down Morehead?

Court: I just wanted to know what part of town you were talking about.

A. Southwest of the central business district. As this clearly indicates the top map in the upper lefthand corner shows existing housing conditions and the map opposite it at the top on the other page shows that the housing is predominantly non-white occupied, but the map at the bottom of Page 12 indicates that almost none of the area is now zoned for residential. Now we're talking about zoning, not planning. This document indicates the legal use of the

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land as defined by the zoning ordinance is now non-residential.

Q. Would the proposed future use also be non-residential?
A. The future use is implicit in the zoning laws.

Q. Would you look at Census Tract 52. Would you tell us if you see any proposed changing in the zoning in Census Tract 52?

Court: Tell us the area of 52.

A. That is in the northwest section.

Court: Are there street names?

【574】 A. It's completely surrounded by railroad.

Court: Mr. Chambers, where is 52? What's the name of the streets?

A. Between Graham and Tryon.

Mr. Chambers: Up as far as Atando Street, Graham and Tryon.

A. This tract shows the drawing on the left showing existing housing conditions, the shaded areas being the areas in which housing now exists. The second drawing shows those section of the housing districts which are zoned to remain as housing, and the third map shows those areas of the housing which were non-white occupied. Quite clearly comparing the third drawing to the second it is clearly indicated that just the housing occupied by non-whites has now been zoned non-residential.

Q. Would you look at Census Tracts 43 and 44? A. Cen-

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sus Tract 43 is on Page 53 and it is also located in the western portion. It's the far western corner, northwestern corner of the city. The streets in there are Thrift Road, Hovis Circle. It's bounded on the north by the P & N Railway and on the west by the city limits and on the east by I-85. Again the maps show the same kind of development that the first map showed, the shaded areas which are occupied by housing, the second map shows the areas which are zoned for housing and in this case all of the undeveloped area is additionally zoned for housing in addition to the areas which [575] were occupied by housing. While the third map clearly indicates that there were at this time no non-whites.

Court: What is the time you're talking about?

A. September, 1962, was the date of the publication of this document.

Q. Does the map show the race of the people who live there? A. Yes. It shows the race of the residents as all white. Census Tract #44, which is just to the east of this tract . . .

Court: The one you've been talking about is 43?

A. Yes. This is just to the east of this tract across the P & N Railway tracks and this is indicated here as a census tract which had both white and Negro residential areas in it, but the proposed zoning eliminates from the residential zoning those areas which were occupied by Negroes. They are now zoned non-residential.

Court: Have there been any areas occupied by white people in 1962 that have been zoned industrial?

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A. Only, as I indicated, those areas immediately adjacent to Griertown on the north. This is the only area, this area shown right here, in which proposed industrial development is taking place and also in the census tracts on the east side of the line, which I described earlier, in the areas adjoining the line. There is industrial zoning, some of which may be occupied by white house-owners at the present.

Court: You're testifying what the map shows. What [576] does the map show? Does the map show the areas occupied seven years ago by white people have been zoned industrial or are proposed to be zoned industrial?

A. Predominantly, no. There may be such areas but the discrepancy in the volume is very significant.

Court: Did you just testify that east of Tryon Street there were some areas that you refer to as white that have been recommended for industrial zoning?

A. Adjacent to Griertown.

Court: What about the place which you indicated on the east side of Tryon Street?

A. Census Trace #4. No, that's just about all non-white right now, sir.

Q. Mr. Rabin, how can city planning effect housing patterns?

Mr. Waggoner: Objection.

Court: The objection is sustained. I think that question simply says what are the limits to the kind

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of laws that a city council may take a notion to pass.

Mr. Chambers: That's not our position, Your Honor. Your Honor, if we call a doctor in to testify he can testify that a man probably died because he got a blunt instrument hit him beside the head. We only call in another person as an expert to talk about effects of action on housing patterns.

Court: What people can do by city planning is not [577] pertinent here. You asked him what can be the effect of city planning on housing patterns. The objection is sustained.

Mr. Chambers: May I show what the answer would have been had the Court allowed him to answer?

Court: No. I think the question is what he infers from the papers has been the effect, not what might be in some imaginary circumstance.

Q. Mr. Rabin, what in your opinion was the effect of city planning on the housing pattern?

Mr. Waggoner: Objection.

Court: The objection is sustained. If it is shown to have an effect I think this is the duty of the Court to infer or not to infer from whatever competent evidence there is. You have a witness who hasn't the faintest idea about the subject and is speculating upon the same basis as the Court is being invited to speculate.

Mr. Chambers: Your Honor, would the Court again allow me to show what the witness would have answered?

Court: The objection is sustained. You go ahead and answer for the record.

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A. I would say that the most telling effect is that the recommendations of the plan were two years later reflected in a zoning ordinance which adopted most of the recommendations of the [578] plan and legalized the restrictions on the use of the land which were only proposals in the plan.

Q. Now, Mr. Rabin, going to zoning, in your study did you look at the zoning ordinance of 1947? A. Yes, I did, the map, not the text of the ordinance itself.

Q. This is Plaintiff's Exhibit #9, is that correct? A. Yes.

Q. Now, would you tell the Court what this map shows? A. This map shows the City of Charlotte as it was bounded and divides the city up into five districts, which are defined as single family residence, business #2, industrial, business #1, and residential #2.

Q. Now, just for illustration did you prepare a document to show the boundary lines of the City of Charlotte for 1947? A. Yes, I did.

Mr. Chambers: We'd like to get this marked as Plaintiff's Exhibit #41.

Court: What kind of map is that, Mr. Chambers?

Mr. Chambers: It's a map of the City of Charlotte downtown.

Court: Who made it?

Mr. Chambers: This was prepared by the Champion Map Corporation, Charlotte, North Carolina.

Q. Mr. Rabin, does the green outline on this map show the city boundaries in 1947? [579] A. The green lines show the boundaries as they are shown on this map.

Q. Now, did you notice anything . . .

Court: Does the green outline show what you read to be 1947 boundaries of the city?

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A. On this map they are not described. There is a line which simply encloses the area which is zoned. I assume that it's the city boundary. The title of the map is City Building-Zoning Map for Charlotte, 1947, and I think it's reasonable to assume the line is the city boundary and that is the line I duplicated, but I don't know.

Court: Well, what's the number of the exhibit you copied the lines from?

A. Exhibit #9.

Court: You took #9 and saw something on there you thought was the 1947 city boundary?

A. Yes, sir.

Court: And you put a green line on Exhibit 41 to show on Exhibit 41 what you think the '47 boundary was?

A. Yes, sir.

Q. Mr. Rabin, will you tell the Court what you found on Exhibit 9? A. Well, I compared this map to the map, the census racial distribution—I don't know what the exhibit number is, it's in evidence—and examined the proposed zones in comparison to [580] the then existing uses of land and I found that with the exception of two small areas—one is called Double Oaks which is an area just east of Statesville Road and north of Oaklawn Avenue, a very small area there, and an area just southeast of the central business district which I believe is known as Cherry—with the exception of those two areas, all other Negro residential

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areas of the city were zoned industrial by this 1947 zoning map. Those are the only two then Negro residential areas of the city which were zoned residential.

Q. What indications on the map show industrial zoning?
A. A dashed line shows industrial zoning; a slanted line shows single family residence—and by the way none of the Negro residential areas are zoned single family residences—the crossed hash lines are business #2; the dotted areas are business #1; the blank areas are residence #2, other than single family.

Q. And the zoning map of 1947 zones basically all of the Negro residential areas as industrial? A. Yes.

Q. What is the effect of that, Mr. Rabin? A. The effect of that is to do several things. First of all, it makes the land on which people live accessible to other uses, even desirable for other uses. It also permits the rapid deterioration of the quality of the land—and this is [581] clearly evident from the amount of industrial development which has taken place in areas of Negro residences. It's quite common. One drives around and finds residences and industry adjacent to each other. It's unquestionably a fact that many of the industries have a blighting effect on the housing which adjoins them. Consequently, there is an effect on the value of housing and although it might be contended that a residential property inside an industrial zone reasonably might be enhanced, it certainly could be contended that the residence which remains across the street from the industrial zone, and if it continues to be zoned residential, is deprived of value by virtue of the zoning of the areas across the street as industrial and the threat of the introduction of blighting or noxious uses into that area.

Q. When was the next change in the zoning in the City

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of Charlotte? A. The next change that I examined was in 1962. This was a major change and adoption of a new ordinance. I would assume that in the intervening time between 1947 and 1962 there were amendments to this map which I did not examine.

Court: Our City Council meets every Monday to amend zoning ordinance.

Q. Mr. Rabin, I show you Plaintiff's Exhibit 10 and ask you if this is the 1962 zoning ordinance you were talking about. A. Yes, it is.

【582】 Q. I show you also Plaintiff's Exhibit 10 and ask you if this exhibit depicts the zoning as set out in the zoning ordinance? A. No, it doesn't. The large map is a key map to a series of smaller maps which depict the zoning, as the new ordinance is a very detailed kind of thing, and there are sixty sheets each of which outlines the zoning of a single tract and those tracts are numbered according to the designations on this map and they do not correspond to earlier ward lines or census tract lines. They are lines determined in some other way by the Planning Commission. This is the key map to the census sheets.

Q. These small sixty sheets you are referring to are included in this exhibit. Are these the sheets you're talking about? A. Yes, they are.

Court: This is a big map rolled up and sixty little maps, is it? What is the number of that?

Mr. Chambers: It's Exhibit 10.

Court: Are the sixty smaller zoned maps part of Exhibit 10?

Q. Mr. Rabin, will you tell the Court what the 1962 ordi-

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nance does? A. The ordinance which we are referring to now deals with an area considerably larger than the area dealt with in the 1947 zoning ordinance. This ordinance zones land, not only within [583] the present boundaries of the City of Charlotte, which are considerably larger than they were in 1947, but also beyond those boundaries out into Mecklenburg County. Of the sixty sheets which comprise the entire zoning map, approximately thirty of them cover the area within the City of Charlotte.

Q. Now, you indicated a moment ago an industrial zone that runs from North Tryon Street to the southwest Charlotte. Did you examine the residential zoning on the east and west side of this? A. Yes. I took the approximately thirty sheets which comprise the city itself and I divided them up into two groups, those falling on the east side of the line I described earlier and those falling on the west side. Only one of the zoning tracts, that is, Tract #18, is bisected by that line. All of the others either fall to one side or the other of the line, and I tabulated these census tracts according to the following characteristics. I noted what the predominant zoned use was; I noted what the subsidiary zoned uses were; and I noted what the overall character and general nature of the residential uses were. I found that the zoning on the east and west side differs very significantly. Zoning on the west side of the line which I described, the residential zoning, is considerably more dense than the zoning on the east side of the line. All of the residential zoning in the thirteen zoning tracts—and they are tracts number, 2, 3, 4, 5, 11, 12, 13, 14, 15, 16, 17, [584] and the western portion of 18. The residential zoning in all of those tracts is either R-6, R-6 multi-family, R-9 or R-9 multi-family. On the east side of the line which I described residential zoning is predominantly R-12 and

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R-15, considerably less dense. I think this assumes some significance from a statement which is contained in the comprehensive plan which clearly sets forth the idea on Page 23. It says: The plan proposes that the density of population be held to comparatively low levels to avoid the unfavorable consequences of crowding too many people too close together on too little land. Yards and open spaces, a quiet, restful atmosphere and family privacy result from low population density.

Q. Mr. Rabin, what is meant by R-6? A. R-6 is a single family residential district in which 6000 square feet of land are required to accommodate one family.

Q. What is meant by R-12? A. R-12 is a single family residential family district where 12,000 square feet are required to accommodate one family.

Q. And R-15 would require 15,000 square feet? A. That's correct.

Q. Your testimony is that there is no R-12 or R-15 in the west side or predominantly Negro side of Charlotte? A. That's correct.

Q. And that the zoning in the east side is predominantly R-12 or R-15? **[585]** A. That's correct.

Q. I think you also testified that your industrial zoning in the City of Charlotte is primarily in the west side, the Negro side. A. Of the thirteen zoning tracts on the west side, all of them have industrial zoning in them and five out of the thirteen range anywhere from $\frac{1}{4}$ to over $\frac{1}{2}$ industrially zoned. All of the remaining have lesser amounts of industrial zoning in them.

Court: Do these thirteen tracts that you are talking about include all of the city west of Tryon Street and the railroad tracks?

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A. Yes, they do. On the east side there are fifteen tracts and their numbers are 6, 7, 8, 9, 10, 18, 19, 20, 21, 22, 23, 24, 26, 27 and 32. I would note that 18 is only part, only the eastern part of that tract. There is no tract on the eastern portion which has a major part of its area industrial. All of the tracts on the eastern portion adjoining the western portion have industrial lands on their western edges and, in addition, the tract which is #22 and which is immediately to the north of Griertown, has industrial uses along its southern boundary which is the northern edge of Griertown. I would say one other difference which I noted is that office zoning, that is, the permitted use of the location of offices generally in residential areas—this is as distinguished from offices in the [586] central business district—twelve of the fifteen zoning tracts on the east side permitted office uses, while four of the thirteen zoning tracts on the west side have permitted office uses.

Q. Mr. Rabin, what effect would the more densely zoning areas have on property values? A. Well, quite obviously where a great amount of land is required to build a house the cost of housing is going to be higher. Where a lesser amount of land is required to build, the cost of housing is going to be lower.

Q. Did you note in the zoning on the west side where there was multi-family zoning? A. Yes, there is a great deal of multi-family zoning. In fact, eleven of the thirteen tracts on the west side have multi-family zoning.

Q. Now, moving to Urban Renewal, did you study documents pertaining to Urban Renewal in the City of Charlotte? A. Yes, I did. There is a document which is an exhibit which displays the extent and location of all of the Urban Renewal projects.

Q. Are you referring to Plaintiff's Exhibit 14? A. Yes.

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Q. That exhibit shows the present Urban Renewal areas in the City of Charlotte? A. Yes, it does.

【587】 Q. Does it also show where the families who were relocated were relocated? A. Yes, it does.

Q. Would you tell the Court what those documents show? A. Well, taking the map of Urban Renewal areas first, all of the Urban Renewal areas and consequently all of the displacement from the Urban Renewal areas took place in what were Negro residential areas at the time of the initiation of those projects. The relocation figures which were furnished. . . .

Court: How do you define a Negro residential area?

A. One which is predominantly occupied by Negroes as shown by the figures given by the census.

Q. One further point, Mr. Rabin on that, do the figures for relocation of people in Urban Renewal appear in the Workable Program submitted by the City of Charlotte?

A. Yes, they do.

Q. Go ahead. A. Somewhere under here I have another map.

Mr. Chambers: I'd like to get this exhibit marked as Plaintiff's Exhibit 42.

Court: Is that another Champion map?

Mr. Chambers: Another Champion map.

Q. Mr. Rabin, tell us what this map shows, Plaintiff's Exhibit 42. A. Yes. This map has on it in yellow the areas which appear in blue as industrial on the comprehensive plan. It has on it 【588】 in red the location of all

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of the existing public housing projects. It has on it in blue the locations of proposed public housing projects for which sites have been identified by the Housing Authority. It has on it in green the locations of schools which are predominantly Negro in enrollment. It has on it numbers which represent the number of households relocated by the Relocation Office to the neighborhood or which the number appears.

Court: Say that again.

A. It has on it numbers which indicate the number of households which have been relocated either from Urban Renewal or highway construction to the area on the map.

Court: The number appears where the people now live?

A. Yes, sir. The map identifies the location of several over-crowded schools.

Court: How are they identified?

A. They are identified by numbers which appear next to the school which give the present enrollment over the rated capacity.

Q. What do the figures with respect to Urban Renewal and relocation show, Mr. Rabin? A. As I indicated to start with, all of the original displacement took place from Negro residential areas and all of the relocation, with the exception of 189 families, took place into Negro residential areas. Those 189 families were all relocated into one area which was at the time the relocation process [589] began an area of low income white residence called Villa Heights,

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I believe . . . yes, and this is an area in the vicinity of 20th and Parkwood which has since become a predominantly Negro area. All of the other relocation activities have moved people into what were areas of Negro concentration before.

Q. Mr. Rabin, what was the effect of this relocation on classroom facilities in the schools? A. Well, the map clearly shows. . . .

Mr. Barkley: If the Court please, I believe I'll object to that. This man hasn't been here to get that information himself. All he knows is something he read and we'd like to know what he's read.

Court: Are there figures in the record on which this. . . .

Mr. Chambers: That's correct, defendant's answers to interrogatories, Plaintiff's Exhibit 1, already in evidence.

Court: Well, as I understand it, he's giving me a road map through these exhibits and I'm trying to take some notes on it so I can find the exhibits.

Q. Have you looked at the figures that show how many people were moved into crowded schools or what this did to the schools? A. What I have looked at, Your Honor, is the areas into which people have moved and I have looked at the then enrollment of those schools as it was effected by the number of people [590] who then lived in the area.

Court: Did you look at other areas in town to make any kind of comparison how schools were or were not crowded in other areas?

Yale Rabin—for Plaintiff—Direct

A. No. I was trying to determine only whether there was a relationship between the movement of people by the relocation office and the overcrowding of the schools into which they had been moved. I did not look at areas to which no one had been moved.

Court: You're not suggesting that crowding in schools is confined to the areas you referred to as Negro areas, are you?

A. No, sir. I am aware of the fact that there is overcrowding in schools which are predominantly white. What I'm trying to show is that some overcrowding is the direct consequences of public action.

Court: And you say that map contains on it your copying of the figures from the statistics showing the comparison of school capacities with students enrolled in several schools in that area.

A. I would say so. The two I would cite are the Northwest Junior High School, which is as the map indicates completely surrounded by relocation figures, and the Barringer School which is similarly surrounded by relocation figures. It's quite clear that a great bulk of the displacements have been [591] moved into the areas served by these two schools.

Mr. Barkley: I believe I'll object to that and move it be stricken out. I believe the evidence will show that the Barringer School, for example, was due to the Negroes themselves voluntarily branching out, as is the custom here.

Yale Rabin—for Plaintiff—Direct

Mr. Chambers: Your Honor, I don't know where that appears.

Mr. Barkley: It doesn't show it was the result of the zoning plan.

Mr. Chambers: We're talking about relocation.

Court: Mr. Rabin, I'm not asking for you to draw conclusions from this data but I'm simply asking you if you have figures which show the number of relocated people who were moved into the school areas you have talked about here.

A. Yes, sir.

Court: And you do not have figures on how many people moved for other reasons in or out of those areas.

A. No, sir.

Court: Your figures simply reflect the fact that, disregarding mobile classroom units, the schools in those areas on a chart have a rated capacity of so many students and you find more than that enrolled there.

A. Yes, sir.

【592】 Court: Let's take a break.

SHORT RECESS

Court: With reference to this Exhibit 42, which is a map of Charlotte, can you tell me the number of the exhibit from which you got the figures as to the crowded conditions in the schools?

Yale Rabin—for Plaintiff—Direct

A. Not by number, no, sir.

Mr. Chambers: It's Plaintiff's Exhibit #1, Table 1. That's the enrollment in the school, Your Honor, and the student capacity is Table #2.

Mr. Waggoner: These two exhibits don't use the same legends. One is based on census tracts and the other one is based on school districts which do not coincide.

Mr. Chambers: Which map?

Mr. Waggoner: I thought you were talking about this population on this.

A. The material I'm referring to is simply taken from the table furnished by the school which lists the enrollment during the 1968-69 school year and it lists the capacity of that particular school. It's neither zoning tract or census tract, it's just data specifically referring to the school itself. The figures on the relocation were also not related to census tracts or zoning tracts. Those figures, as provided by Exhibit #14, that describes by neighborhood name, such as Brooklyn, Cherry, Clanton Park, and so on, the neighborhood [593] to which a certain number of families—I want to emphasize that. I think Your Honor said before these numbers represent the number of persons. The numbers on this Exhibit #42 represent the number of families who have been relocated, not the number of individuals.

Court: How can one look at this map and see what figure represents families transferred into an area and what figure represents what you say is the excess of school population over the rated capacity?

A. There are only two of those noted, 932 enrolled as com-

Yale Rabin—for Plaintiff—Direct

pared to 801 capacity for this Northwest Junior High School, and the other one is Barringer which is 799 as opposed to 616 capacity. All of the other figures are relocation figures.

Court: That simplifies that.

Q. Mr. Rabin, moving to public housing, does your Exhibit 42 map show the present public housing in the City of Charlotte? A. Yes, it does.

Q. How are they shown on the exhibit? A. These are designated by red areas at the location of the public housing. These projects also appear on the Exhibit #14 which is the map of Urban Renewal projects and shows those public housing projects shaded in gray existing within the area covered by the map.

Q. Now, does your Exhibit 42 also show the proposed public housing? [594] A. Yes, it does.

Q. How does it show those proposed housings? A. It doesn't show all of the proposed. It shows only those proposed public housing projects for which sites have been identified. It's my understanding that there are authorizations for units in excess of what's represented by these sites but no sites have yet been selected for those. These represent all of the sites which have been designated and they are shaded in light blue on this Exhibit #42.

Q. Mr. Rabin, what does that exhibit show in terms of the racial composition of the area where the public housing is located and where they are projected to be located? A. All of the public housing with the exception of the existing housing for the elderly structure which is adjacent to the central business district, all of the others are located in Negro residential areas and all of the proposed public

Tyle Rabin—for Plaintiff—Direct

housing is also in the western section. Three of the five sites proposed for public housing are quite close to the Barringer School which I referred to before as having been an area into which a good deal of relocation has been carried out by the Relocation Office. As a consequence it's my opinion that school has become overcrowded.

Q. Mr. Rabin, what do your figures show with respect to the racial composition of residents in public housing? A. Well, according to the Workable Program for Charlotte all of [595] the housing projects except the housing for the elderly are predominantly occupied by Negroes. I can site the actual figures for you.

Court: What are the figures?

A. Piedmont Courts has 368 units of which 256 are black occupied, 112 are white occupied; Fairview Homes has 468 units of which 468 units are black occupied; Southside Homes has 400 units of which 400 units are black occupied; Belvedere has 200 units of which 122 are black occupied and 78 white occupied; Earle Village has 409 units of which 409 units are black occupied; and Erwin Towers, which is the housing for the elderly project I just referred to, has 175 units, 2 of which are black occupied and 173 of which are white occupied.

Q. Mr. Rabin, did you also look at the streets and proposed streets and highways for the City of Charlotte? A. I looked at the major thoroughfare plan, that is, primarily those proposals for the construction of highways, U. S. highways and interstate highways, within the city.

Q. Are these also shown on Plaintiff's Exhibit #13? A. Yes, they are.

Q. Would you tell the Court what this exhibit and your study have shown? A. Well, as within Urban Renewal

Yale Rabin—for Plaintiff—Direct

virtually all of the displacement for the acquisition of the right of way for these roads has involved the movement of non-white families and has been [596] virtually no displacement for the roads which involved white families. The second factor is that the major interstate road which runs through the city—I-77—tends to reinforce this industrial band which runs from north to south through the city, which I referred to before, by running parallel and adjacent to it, thereby adding to the physical barrier which would separate east and west Charlotte.

Mr. Chambers: Your Honor, I have two questions and one question that I proposed to ask Mr. Rabin I think the Court has indicated he considers it incompetent.

Court: Go ahead and ask it and I'll rule it out and let him answer it.

Q. Mr. Rabin, from your study with respect to the five areas that we have discussed do you have any opinion about the effect of the city activities in these areas and the racial housing pattern as it presently exists?

Mr. Waggoner: Objection.

Court: He's making the assumption that if the activities reflected in the exhibits have taken place what is the effect of it.

Mr. Chambers: Is the Court asking plaintiffs—

Court: No, I'm simply thinking about the question. You're asking a question, I suppose, which is too broad. It seems to me, though, that you could ask him that if the Court assumes that all of the activity [597] reflected in these exhibits has taken place,

Yale Rabin—for Plaintiff—Direct

what, if any, effect would it have upon or has it had upon the housing patterns. I think that would be a competent subject for speculation.

Q. Mr. Rabin, if the Court should find that the matters you have testified to with respect to city activities and actions have, in fact, taken place, what effect, if any, would these activities have on the racial housing patterns in the City of Charlotte?

Mr. Waggoner: Objection.

Court: I believe I'll overrule that objection.

A. First of all, I think these activities have had the effect of perpetuating the separation of racially distinct areas of residence. Some of these things, of course, have in fact taken place and are not, I think, matters of my opinion and those should be separated from what the consequences of what has not yet taken place.

Court: What he is asking you is historically, not speculatively about the future, but what has been, if any, the effect on the racial housing pattern.

A. I think the effect has been to perpetuate the separation of racially distinct residential areas. I think the effect has also been to create physical barriers which did not exist before between those racially distinct residential areas. I think the effect has been to reduce the quality of the [598] residential environment in areas predominantly occupied by black people.

Court: I think I'm going to have to sustain the objection to that because without some personal

Yale Rabin—for Plaintiff—Cross

knowledge of the residential environment I believe you're going to feel that. Stick to the question.

A. Your Honor, I have some personal knowledge of areas which have been effected by industrial construction.

Court: I'm not asking you to answer that question. I'm instructing you not to continue to answer that part of it. This deals with personal knowledge. It goes beyond the scope, I think, of a proper answer to the question.

Mr. Chambers: That will be all, then, Mr. Rabin.

Cross Examination by Mr. Waggoner:

Q. Mr. Rabin, as I understand, you have based your opinion in part on Plaintiff's Exhibit #4, on the overlay marked Plaintiff's Exhibit 4, is that correct? A. In part, yes.

Q. Let me ask you with reference to Census Tract #51. Do you know the number of people within Census Tract #51? A. No, I do not.

Q. You do not know the racial composition of that? A. I can by referring to my papers.

[599] Q. Do you know the degree of Negroes or percentage of Negroes who live in Census Tract #53? A. If you allow me a minute, I can tell you that, yes.

Q. All right, sir. A. The non-white population of Census Tract 53, the percentage according to the 1960 was 3.6%.

Q. What is this based upon? What information in the record do you base this upon? A. The '60 census. I don't know whether that has been entered in the record or not.

Q. But your information, then, is based on the 1960 census, is that correct? A. Yes.

Yale Rabin—for Plaintiff—Cross

Q. And you do not know whether or not the '60 census is in the record. A. No, I don't.

Q. Now, with reference to the proposed Twenty Year Plan, which is Plaintiff's Exhibit # . . .

Court: Where is Tract 53, Mr. Waggoner?

Mr. Waggoner: Tract 53, Your Honor, is roughly the Hidden Valley area.

A. Exhibit 12 is The Next Twenty Years.

Q. All right, sir, would you come down to the map, please, sir. (The witness does so.) Now, I believe you testified that most of the industrial location will displace Negroes as they [600] are presently situated in the city, is that correct? A. Yes, sir.

Q. All right, sir. I direct your attention to the map attached to Exhibit 14 and ask you to refer to a large area adjoining N. C. 16, the P & N Railroad and this area which appears to be a rather substantial area in the northwestern part of the city and ask if there any Negro population in that area at the present time. A. Whether there is any Negro population in that area at the present I couldn't specifically say, but this does not reflect exactly the area which is zoned industrial, the 1960 Comprehensive Plan.

Q. This is a comprehensive plan but this is the one you testified with reference to. A. Oh, no, I testified with reference to the amount of industrial land zoned in each one of the zoning tracts on the map which you just removed. This is a recommendation and the statement that I made was that in general the 1962 zoning laws followed the recommendations set forth in this plan, but in specific detail they differ.

Q. Is there any difference in this area? A. We would have to examine that. That can be done.

Yale Rabin—for Plaintiff—Cross

Q. Do this for me, please.

Court: Mr. Rabin, isn't that the map you were testifying from a while ago?

【601】 A. Yes.

Court: Is that one of the maps you were using in your testimony?

A. Yes, it is, but it's not the map to which I related the zoning of the industrial areas. That was Exhibit 10.

Court: Well, the planning map is the one . . . go ahead.

A. Do you want to point out to me on this map which areas we're concerned about?

Q. Bounded by a creek on the east. A. Let me qualify one more thing. All three of the areas are outside the City of Charlotte and I stated in my statement on the stand that I examined only those thirty tracts which lie within the City of Charlotte. I made no examination of the areas. Here's the city line right here, 15, 43, 39 . . .

Court: Well, in order to get past that semantic difficulty, the school district includes the entire county. Will you examine the map that counsel is showing you and answer whatever questions he's putting about the contents of the map.

A. Area 15 is zoned R-9, I-2, R-6 and I-2. All of the industrial zoning with the exception of one small part in the lower corner is in undeveloped land. The residential zon-

Yale Rabin—for Plaintiff—Cross

ing is in land presently residentially developed and a good deal of land which is undeveloped.

Court: How big is that area?

【602】 A. The area we just looked at is this one which is bounded by Beatties Ford Road, Peachtree Road, Cobbs Hill something . . .

Court: Mr. Waggoner, is there a scale on the map you have in your hand?

Mr. Waggoner: Yes, sir, there is a scale.

A. On here 2,000 feet to the inch, on this map.

Mr. Waggoner: This one has a scale in thousands of feet and it appears that I would estimate $3\frac{1}{2}$ inches to each two miles, roughly, two inches to a mile.

Q. Before you pass on from #15, I'll ask you if the residential areas zoned R-6 do not adjoin Beatties Ford Road.

A. Yes, it does.

Q. Is that not a predominantly Negro community? A. I don't know.

Q. I'll ask you if the great bulk of map #15 is zoned industrial. A. I would say that half of it is zoned industrial.

Q. And half residential, is that correct? A. That's correct. There is a buffer of office uses and multi-family uses running between the two.

Q. All right, sir, I direct your attention next to zoning map #43. A. Zoning map #43 is on two sides of Bellhaven Blvd. With the exception of an entirely undeveloped area in the southern portion, the rest of it is zoned R-9 and R-12.

Yale Rabin—for Plaintiff—Cross

I would estimate that the industrial zoning is about a fifth or a sixth [603] of the entire area.

Court: Mr. Waggoner, to save a little confusion on my part will you give me the census tract numbers of the areas that you have been asking him about which, I take it, you say involves some industrial zoning.

Mr. Waggoner: If the Court please, the only numbers that appear here are 44 . . .

Court: Let me see the little map you've got so I can get them in my hand, the one you have in your hand.

Q. The map we have just discussed is what number? A.
43.

Court: This is not marked. Is this a part of the exhibit?

Mr. Waggoner: This is my copy. This is the one that was in evidence, Your Honor.

Q. I next direct your attention to zoning map 39. I'll ask you if probably $\frac{3}{4}$ of that zoning map is zoned industrial. A. I'd say most of that zoning tract is zoned industrial, yes, and most of that zoning tract is also undeveloped and the areas which are developed are zoned R-6 and some of the undeveloped land is zoned R-9 multi-family.

Q. I next direct your attention to zoning map #42.

Court: Where is 39?

Mr. Waggoner: This is 39.

Court: Tell me what part of town.

[604] Mr. Waggoner: This is on the Piedmont-Northern Railway and Bellhaven Blvd.

Yale Rabin—for Plaintiff—Cross

Court: 43 is also in that neighborhood.

Mr. Waggoner: Yes, sir. 15 is also there.

Mr. Chambers: I'd like to interpose an objection to this because I don't think it's relevant to the testimony we were bringing out on the matter of racial housing patterns in the City of Charlotte. I would like to interpose that objection. We were talking about what action of the city within the City of Charlotte effected the housing patterns. We are confronted with the purple drawing on that overlay within the City of Charlotte.

Mr. Waggoner: Some of the areas we have been discussing lie within the city limits.

Court: It doesn't make any difference whether they lie within or without. If any of it is relevant, all of it is. The school district is the county. Where the notion we're trying the city case alone arose, I don't know.

Mr. Chambers: Your Honor, the question, though, is whether the racial housing patterns within the city have been developed through or encouraged by action of the city.

Court: Do you want to try it on just that bald [605] proposition?

Mr. Chambers: No, no. We have our great problem right here in the City of Charlotte.

Court: Granted. The objection is overruled. Go ahead.

Q. With reference to #42, I'll ask you the area lying adjacent to the Piedmont and Northern Railway, how is it zoned? A. I see the Seaboard. Some of it is zoned industrial, some of it is zoned R-9 multi-family; I would say some of it is zoned business 1. The uses vary. Taking

Yale Rabin—for Plaintiff—Cross

the frontage as a whole, I would say, oh, half or a little bit more is industrial and the other half is residential.

Q. In this area I'd like to ask you about one further map, #39. Is there any industrial zoning in this zoning area? A. Yes, there is.

Q. Would it be fair to say it's roughly $\frac{1}{3}$ to $\frac{1}{2}$ of the area of this map? A. Yes.

Q. So then we have clustered in zoning map areas 15, 33, 42 and 39 substantial areas of industrial zoning, is this not correct? A. I think I pointed out in my testimony that large areas west of the line, which I pointed out, were planned for industrial use and these areas were in excess of the land now being used for industry. These areas that you picked are all in that area I discussed.

Q. All right, sir. Now will you point out on the zoning map the [606] area of greatest concentration of Negroes within the county? A. I could do that more easily on the census tract map.

Q. All right, sir, let's take this one down. A. These areas in here.

Q. You're referring to what census tract numbers? A. 6, 47, 49, there is a concentration. Of course, the other thing that—

Q. Will you just go ahead and list the numbers, please. A. The other point that has to be made is that concentration doesn't necessarily coincide with the boundary.

Court: He's asking you to read the map.

A. I have pointed those out here and here, census tracts 47, 5, 49. I have observed large concentrations in 8 and in 9.

Court: When you talk about census tracts you lose me. If you'll talk about where in the city.

Yale Rabin—for Plaintiff—Cross

A. 8 and 9 is the Villa Heights area; census tracts 5, 49, 47, 46, 48 are the census tracts going roughly north from the central business district, University Park, Lincoln Heights, that area. This area is also concentrated.

Court: Are you going by the color of the map?

A. No, sir, I have been in Grier Heights. By the way, again there is a situation in which the non-white population does not coincide with the limits of the census tract itself. The non-white population is pretty much limited to the north side of whatever that road is.

【607】 Court: Most of that is a big field, isn't it?

A. Yes. There is a park on the south side of the road and a good deal of undeveloped land and some ballfields down in here, but it gives a misleading impression of the distribution or population to put the shading in.

Court: Griertown occupies a small portion of the north end of that census tract and the rest of it is undeveloped land.

A. Yes, sir. Well, there is developed land down here.

Court: Most of the rest of it, then.

A. Yes, sir.

Q. I specifically direct your attention to Census Tract #48, which encompasses the area of West Charlotte, Census Tract 46 which encompasses the school of University Park, and Census Tract #47 which encompasses the part of the old Biddleville School area, and ask you if any

Yale Rabin—for Plaintiff—Cross

one of those census tracts have been substantially zoned industrial by the Planning Commission. Please refer to your maps. A. Again we'd have to look back at the maps. Would you help me to identify the relative numbers in the other maps. Perhaps if you put one on the floor we can do that.

Q. I direct your attention to zoning map 4.

Court: Mr. Waggoner, you're looking at the zoning maps and he's looking at the census tracts.

A. We're trying to relate the two.

【608】 Q. Has some industrial zoning. . . . A. Not a whole lot, although the southern and eastern boundaries.

Q. I'll ask you if it comprises as much as 10% of the zoning map. A. Oh, no.

Q. So then in the heart of a predominantly Negro area we have all residential zoning, do we not? A. Surrounded by industrial zoning.

Court: His question was whether the area he referred to is residentially zoned.

A. I wouldn't say without looking at some of the other . . . we have just looked at one of the maps. This particular zoning tract is predominantly residentially zoned.

Court: How much of it is other than residential?

Mr. Waggoner: We can read from the map the boundaries shown here. On zoning map #4 the northern boundary crosses U. S. Highway 29 bypass perhaps a quarter of a mile; then it follows along Newland Road to Erwin Creek, along Erwin Creek to West Trade Street. At West Trade Street it

Yale Rabin—for Plaintiff—Cross

follows Tuckaseegee Road and then follows Piedmont & Northern Railroad and then it follows Stewart Creek up to Hoskins Creek, which is the northern limit. If the Court please, it is roughly this area here.

A. Actually it's a piece right out of the center like that, comes right down there. It includes part of 48, just about all of [609] 46. . . .

Q. You're referring to census tracts? A. Yes. This zoning tract 5 includes. . . .

Court: I'll tell you what let's do about that. These words will be meaningless to me apart from the maps and I think it would be far more useful if counsel would just take a map and point out the parts of the map they want the Court to consider, if this question is competent. I think I'm looking at what you're talking about and I think the blue area is an area which lies just to the right of the New Mount Holly Road, but I'm not certain, Highway 16. A little sliver of blue along the north side of Bellhaven Blvd., is that what you're talking about as the industrial encroachment within that industrial area?

A. This area only has industrial, like that, at the very bottom of it.

Mr. Waggoner: If the Court please, we will relate this to school districts, if that would be helpful.

Court: This map here, which was mentioned as being a portion of Exhibit 14, was identified, I think, as a map of the Planning Commission going back somewhere around 1960.

Yale Rabin—for Plaintiff—Cross

Mr. Waggoner: And they said these recommendations were made and adopted almost without exception.

[610] A. I didn't say that. I said they generally follow almost without exception. The zoning map in general reflects the recommendations of the 1960 plans, only these particular maps. They specifically illustrate how it's zoned. That map does not.

Mr. Waggoner: If the Court please, I would like to pursue this further in view of the statement that only Negroes will be displaced by the proposed zoning. It's a laborious process. . . .

A. I didn't say that. I said that the proposed industrial land is west of the line which I described. I did not say what you were saying. I said that there is a band of industrial land. . . .

Court: Never mind repeating the testimony. You are illustrating the difficulty of having to try to manage testimony which is not testimony but descriptions of testimony, but I think it's been helpful in understanding the maps. Go on and answer the rest of the questions.

Q. With reference to Census Tract #53 I'll ask you if it isn't substantially zoned industrial.

Mr. Waggoner: If the Court please, that covers four zoning maps and I hate to put the Court to the time and delay on this.

Yale Rabin—for Plaintiff—Cross

A. The zoning tract 18 includes most of 53, part of 14 and part of 13 and comes over to a line which is represented by Sugar [611] Creek, so that this thing we're talking about, Sugar Creek is right here.

Q. I'm asking you for the— A. That's #18, is that correct.

Q. 18 covers part of it, yes. A. It covers more than all of it—excuse me, it doesn't cover this bit of 53 at the very west of the section.

Q. Can you relate that to the census tract? A. This is Tryon coming down here and that area is zoned, except for a bit in the south, almost entirely residential.

Q. Would you say as much as $\frac{1}{4}$ of that is zoned industrial? A. No, sir, I wouldn't.

Q. What percentage would you attribute to it?

Court: What census tract are you in?

A. This is a map covering 53, 14, 13—

Q. You didn't understand my question. I asked about Census Tract 53. A. That's entirely residential.

Q. I ask you to move closer to town towards census tract 52, the next one in.

Court: I'm confused by your answer that census tract 53 is entirely residential.

A. Here is the map.

Court: You're looking at a different bunch of papers, go ahead. You're looking at a zoning map and I'm [612] asking about a census tract.

A. Yes, I'm sorry. These in general are larger than the census tract maps and tend to include either more than one

Yale Rabin—for Plaintiff—Cross

tract or parts of several tracts, which this one does. It does not include the far eastern portion of tract #53, I mean west. It doesn't include the far western portion of tract 53.

Q. I'll ask you if the western portion of zoning map 18 does not contain all industrial or substantially so. A. The western portion of tract #18 has home industrial zoning in the southwest corner.

Q. Would you next go to zoning map #17, if you will, please. With reference to map #17, which as I understand it contains the western portion of Census Tract 53, I'll ask you if the greater portion of that zoning map is not zoned industrial. A. Yes, it is.

Q. I'll ask you what the racial composition of Census Tract #53 is, I'll ask you if it isn't less than 20% Negro? A. That may be so. I can't tell by this map where those Negroes live. For example—

Q. Will you just answer the question.

Mr. Chambers: Your Honor, I think the witness is entitled to explain his answer.

Court: He hasn't answered the question.

A. I can't say whether this portion or that portion is where the Negroes live. This census tract is on two zoning map sheets.

【613】 Court: All he's asking you is what the papers show, the same papers you have been testifying about. What do the papers show in response to his question?

Q. I'll ask you if substantially developed residential areas are not zoned industrial. A. That's correct.

Yale Rabin—for Plaintiff—Cross

Q. This is an area having less than 20% Negro, is that correct? A. I don't know that. The census tract has less than 20% Negro. This is only a portion of the census tract.

Q. You may return to the stand, please, sir. (The witness does so.)

Court: Which is the bigger unit, census tract or zoning map in most cases?

A. Zoning map.

Court: Zoning tracts are bigger than the census tracts?

A. Yes, sir.

Court: Just for comparison, let me see the zoning map you were just referring to. What was the number of that?

Mr. Waggoner: 17 and 18.

Q. Is it fair to say that the proposed zoning or the zoning now in existence in the City of Charlotte includes industrial zoning for both black and white areas? A. Would you repeat that, please?

Q. Is it fair to say that the industrial zoning in the zoning [614] area in the industrial areas include not only white but black neighborhoods? A. I'm not sure I understand what you mean by include. By include do you mean that they zone existing residential land for industrial use? Is that what you mean?

Q. Yes. A. May I qualify my answer?

Q. Certainly. If you answer the question first, then you may qualify it. A. The answer to the question is yes. My

Yale Rabin—for Plaintiff—Cross

observations are that considerably more developed residential land is taken from existing black resident areas than white.

Q. Let me ask you this, are the value of the homes that have been newly zoned industrial, are these valuable homes in dollars and cents? A. This is going to depend entirely on demand. I think that the effect on adjacent homes is far more specific than the effect on homes which lie within the industrial area.

Q. Are the homes that are located in proposed industrial areas homes of substantial value? A. This will vary.

Q. Will you answer my question and then qualify it, please. A. In the inner area they are of less value than they are in the outlying, more expensive, recent subdivisions. Unless you mean are they of more value by virtue of the industrial [615] zoning.

Q. No. I'm asking you if the homes that are physically within the industrial boundaries are not less valuable than the normal or average home in the City of Charlotte. A. I would say that generalization simply could not be made, since the industrial band runs over such a wide quality of housing.

Q. You stated that you had gone around these homes and had seen them and you know the city. We'd like to get an answer to my question. A. I answered your question. I said I don't think that it would be reasonable to generalize.

Court: Do you have an opinion on the answer to the question that he put whether the land that was zoned industrial, whether the houses in industrial areas are more valuable or less valuable than houses in other areas?

A. Generally less valuable.

Yale Rabin—for Plaintiff—Cross

Q. Thank you. Now, the proposed industrial zoning roughly follows the existing rail lines in this city, does it not? A. Not all of it. It follows some of them along great parts of their length and it follows some of them only at intermittent locations.

Q. Is it not true that in your study of Charlotte that the industrial location along the main line of the Southern Railway [616] starting at Concord and going to Gastonia or Columbia, as the case may be, had industrial developments along them since the railroads came here? A. That's historically true but not necessarily good planning.

Q. I'll ask you if it is not normal to expand existing industrial areas rather than spot them all over the city. A. I made no suggestion about spotting them. I am merely suggesting that historical trends, which directly related all industry to waterways or rail lines, no longer applies to modern practices in industry and many industries no longer require any direct proximity to those kinds of transportation facilities. That's all I'm suggesting.

Q. Is it not true that many businesses do require access to rail? A. Some businesses do, yes.

Q. Is it not also desirable to build your interstate highways and circulators in areas that have a lower land cost? A. I don't believe it's desirable to run an interstate highway through a city. There's no reason for it.

Q. Then you would differ with the city planners in that aspect of the plans? A. Yes, sir, yes, sir.

Q. Do you see a conscious design to further separate the races by barriers of highways? A. I wouldn't speculate about that.

Q. With reference to the displaced people who were moved out of [617] Brooklyn, are you familiar with the Urban Renewal in Brooklyn? A. Yes, sir.

Yale Rabin—for Plaintiff—Cross

Q. Where these people went and where they stayed are two different things, are they not? A. I don't know that, no.

Q. As an urban planner you find that the lower income people are substantial movers, do you not? A. I find that lower income people are substantially moved by public action, yes, repeatedly.

Q. And you're saying that any time a low income person moves it's because of some governmental action? A. No, sir, I didn't say that. I said that I find that low income people are repeatedly moved by public action such as Urban Renewal, code enforcement, highway construction, eminent domain proceedings for all kinds of public facilities.

Q. You mentioned code enforcement. Is this not an attempt on the part of governing authorities to upgrade the type of home these people live in? A. Not necessarily. It's an attempt to prevent people from living in substandard housing. It's not necessarily an attempt to upgrade their housing or that house. The object and, in fact, the result is very often the demolition of the property in which the people live and their displacement.

Q. Did you see the kind of homes people were living in in Brooklyn? A. No, sir, I didn't. It was torn down largely before I got here. [618] However, I have seen some of the homes they have been relocated into.

Q. Have you seen the homes they are living in in Biddle-ville? A. I don't know that area specifically so I couldn't say.

Q. Have you seen the kind of homes they are living in in Barringer Woods? A. Yes.

Q. Have you examined the kind of homes that are in the West Charlotte School District area? A. No, I don't

Yale Rabin—for Plaintiff—Cross

know the West Charlotte School District area specifically so I couldn't say.

Q. I'll ask you if you didn't find some excellent homes in all Negro districts. A. Yes, sir, of course.

Q. Now, in the course of your examination of the records in this case—

Court: Mr. Waggoner, you think you'll be at this for some time?

Mr. Waggoner: If the Court please, I have about twenty more minutes I'd like to pursue.

Court: I'm agreeable to staying with it until we finish with Mr. Rabin or coming back at 2:00 o'clock, whichever you gentlemen prefer. I'd rather finish now if it can be done without pressing anybody.

Mr. Chambers: I'd like to do it.

【619】 Mr. Barkley: I spoke to the Court Friday and I told the Court again this morning—

Court: We opened court early hoping we could get through before you had to leave, Mr. Barkley. If and when you have to leave, you may go. We'll continue right now and you feel free to go when you have to.

Q. Now, in your study of the history of location of homes in or near industries, do you find that industry always follows the homes into a community? A. No, not necessarily.

Q. Are you familiar with the fact that Charlotte was surrounded by a number of outlying mills which have now been incorporated in the city limits? A. No, I am not.

Q. So you have no real opinion as to how the areas became industrial, whether they were residential and then

Yale Rabin—for Plaintiff—Cross

became industrial or were industrial and the residents just came to them, are you? A. I would assume—

Court: The question is what you know, not what you assume.

A. Repeat the question, please.

Q. Read the question back, please.

(The Court Reporter reads the question on Line 15 above.)

A. I have an opinion, yes.

[620] Q. What is your opinion? A. My opinion is that the early development was that industry and the housing of people who worked in it developed side by side years ago.

Q. This was the mill village concept, was it not? A. Yes.

Q. Does not industry often seek the lowest cost building to tear down and locate on the land?

Mr. Chambers: Your Honor, I object to that.

Mr. Waggoner: He's an industrial planner or urban planner.

Court: Overruled.

A. First of all, I have no knowledge that industry seeks buildings to tear down. I am aware that industry has to seek land in industrially zoned areas and I am aware that industrially zoned land with any kind of a building on it is going to cost more than similarly zoned land without any building on it. Therefore, it seems quite reasonable that industry seeking to locate would seek to locate on land on which they don't have to incur the expense of tearing down an existing building.

Yale Rabin—for Plaintiff—Cross

Q. Do I understand you to say—and this is without qualification—that industry will pay more for undeveloped land no matter where it's located? A. I didn't say anything resembling that. I said customarily land with no buildings on it—in fact, I said the opposite—[621] land with no buildings on it customarily costs more than similarly zoned and located land with existing buildings on it that must be torn down. If I've got to buy a building site and I can buy a piece of vacant land for X-dollars and I can buy a similarly located piece of land with buildings on it that I have to pay for and then have to bear the expense of tearing down, I'm going to buy the less expensive vacant land on which to build.

Court: Have you ever bought any industrial land?

A. No, sir.

Court: Let's go on to something that he's supposed to know about.

Q. As an urban planner have you found that Negro families ordinarily have more children than white families?

Mr. Chambers: Objection. That has absolutely no relevance.

Mr. Waggoner: If the Court please, Barringer School was criticized for—

Court: The objection is overruled. Go ahead and answer the question, if you know.

A. I find that Negro families have about the same number of children as white Catholic families.

Yale Rabin—for Plaintiff—Cross

Q. What about an urban southern Protestant community? A. Fertility does seem to be a bit lower among the white folks down here.

【622】 Court: I think taking the state at large it was about 5.2 children per family twenty years ago. I don't know what it is now. Can you answer his question?

A. Well, taking census figures as a generalization about 3.10 is white family average size, about 3.8 average black family size.

Q. So you will find in a changing neighborhood from white to black that there is usually some taxing of the school facility, don't you? A. If young families with children are moving in, yes. If you are displacing elderly people and white families with children are moving out, you might have the opposite effect. This would depend on the age range in which the people are who are being displaced.

Court: Is this asking you for an answer to a question that you don't know the answer to?

A. I think that the question is not worded in specific enough terms.

Court: Let's go on to another question. We can look up the birth rate if we need to, Mr. Waggoner. I had sixteen aunts and uncles at one time on one side so I don't believe the birth rate inquiry is going to point to anything material.

Q. One further thing. You're aware of the fact that Plaintiff's Exhibit #4 does not purport to be a study of

Yale Rabin—for Plaintiff—Redirect

the entire City [623] of Charlotte. A. Identify Plaintiff's Exhibit 4.

Q. This is the overlay we referred to. A. Well, this is true but I have looked at the census data and have it here and if it needs to be made an exhibit, possibly it can be. This lists all of the census districts and the percentages of their white and non-white population.

Q. And you are familiar with the fact that the publication called Blighted Areas September, 1962, did not purport to be a study of the entire city, too. A. That's correct. It's a study of blighted areas.

Q. It only studied certain census tracts that were designated in there, is that correct? A. Yes, sir. I don't know the exact proportion. As the map in the beginning shows, it substantially covers the entire western part of the city.

Q. You read the preface to the study, did you not? A. I don't recall it. Yes, I did read it but I couldn't quote from it without looking at it.

Q. These two rather incomplete studies form a substantial part of the conclusions you have drawn, do they not? A. Plus my observations. I rather extensively have driven around and through the eastern sections of the city as well.

Mr. Waggoner: No further questions.

[624] Redirect Examination by Mr. Chambers:

Q. One question, Mr. Rabin. You say that that blighted area map considers only those areas in the western side? A. I didn't say that. I said that it covers all of the western section. It reaches over, as you can see, into the central business district area and over to include Griertown, but other than that it's substantially the entire western portion of the city.

Yale Rabin—for Plaintiff—Recross

Q. Does it follow somewhat, too, the same belt you were talking about running from south to north? A. Yes, sir, it does.

Mr. Chambers: Nothing further.

Mr. Waggoner: If the Court please, I'd like to ask him just a few more questions.

Recross Examination by Mr. Waggoner:

Q. You are familiar with the fact that the City of Charlotte has a land area of approximately 64.8 miles, are you not? A. I am now, if that is so.

Q. I'll ask you if Washington, D.C., does not have a land area of approximately 62 square miles. A. That's true.

Q. So Charlotte is a bigger land area than Washington, D.C. A. Yes.

Mr. Waggoner: No further questions.

【625】 Mr. Chambers: Nothing further.

Court: Mr. Rabin, thank you very much for coming.

Mr. Chambers: Your Honor, I'd like to make sure we have all our exhibits back before the Court.

Court: You probably would like to take all exhibits on the bench here and put them altogether. Do the defendants have any further evidence?

Mr. Waggoner: If the Court please, I am considering two exhibits here which are taken from the American Jurisprudence Lawyers Desk Book. It shows the population of land areas of the various cities for comparison purposes. We also have the areas of the states and the only purpose there is to show the land area of the District of Columbia.

Colloquy

Court: All right. Have you got the land area of this school district?

Mr. Waggoner: 542 square miles.

Mr. Chambers: We'll stipulate that but I don't know the relevance of the land area for Washington.

Mr. Waggoner: Your witness had a lot to say about school district and we wanted to show that he had a rather small area.

Court: The Washington district has about 45% more pupils than the Charlotte-Mecklenburg District.

Mr. Waggoner: Yes, sir.

Court: Roughly half again as many in Washington.

【626】 Mr. Waggoner: We will offer these.

Court: Some question came up about the census figures. Is there in this batch of exhibits anything which shows how many people lived in these various census tract areas when the 1960 census was made?

Mr. Chambers: It shows the percentage of non-white residents in the various census tracts. We didn't introduce a copy of the 1960 census.

Court: How about somebody introducing that.

Mr. Chambers: All right. Your Honor, this is shown in this document giving the facts and figures of the population and economic data for the City of Charlotte dated March, 1968. We would like permission to introduce a copy of the 1960 census.

Court: I would appreciate it if you would.

Mr. Waggoner: If the Court please, we would like to introduce a composite exhibit, Defendant's Exhibit #9, which indicates the population of the United States cities over 100,000 people and also

Colloquy

contains a land area designation.

Court: Is that the latest figures?

Mr. Waggoner: This is 1960. These are the latest figures that we have.

Court: Well, the World Almanac has a lot of those figures up to date.

Mr. Wagonner: We will substitute if that will be all [627] right.

Mr. Chambers: It's my understanding, too, that there is a supplement dated 1968 to the 1960 census

Mr. Rabin: I understand that there has been some annexation since 1960 so that any figures which the '60 census might give as the population of Charlotte would be distorted to the extent that the area has been added to and additional population not caused by migration or birth.

Court: Current estimates, taking those things into account, run about 255 or 260 thousand in the city limits and a third of a million in the county. If somebody has got the latest dope on that, I'd like to have it for whatever use it may be.

Mr. Rabin: Any data which is taken from the '60 census should then include those tracts which in 1960 were outside the city but which now by annexation have been included so you would get a true picture of the area we're talking about.

Court: As a matter of curiosity I looked up the population of Rhode Island and found that it's undoubtedly considerably less now than the population of Charlotte. It was about 10,000 more nine years back and the witness said it wasn't growing, so I suppose Charlotte is about a fourth again as big as Providence.

Colloquy

Mr. Waggoner: They have an 18 square mile school district, though. 17.9 is the area of Providence.

【628】 Court: I want to keep this record open a little while and if there is no objection, I'll keep it open until further notice. I may find in studying these data that there is a lot of other information that is readily available from public sources that ought to be looked at. I doubt that I will discover anything really pertinent that isn't somewhere in the mass of exhibits. The record will remain open and if either of you discover you'd like to introduce or have the Court consider something, the record will be open until further notice for that purpose. Is the pupil assignment plan fully described in the exhibits?

Mr. Chambers: The present one, Your Honor?

Court: The present one. It's portions of your Exhibit 1, I know. The items I have in mind are the answers to interrogatories 2, 3, 4, 5 and 6, I guess.

Mr. Waggoner: Your Honor, we have a publication that is given to the schools called Pupil Assignment Guidelines.

Court: How about introducing that so I can study it if I don't get the answers to the questions.

Mr. Wagonner: We will offer Pupil Assignment Guidelines June, 1967, as Defendant's Exhibit 10.

Court: There is also a paper on faculty assignment which is the answer to interrogatory #8 and there is a 【629】 good deal of testimony on that subject. Is there any other learning on the subject of employing and assigning teachers that I ought to know about?

Colloquy

Mr. Chambers: Your Honor, there was an amendment to the North Carolina General Statutes in 1967. What we hope to do, with the Court's permission, is to submit to the Court on Monday a brief setting forth our position relative to the whole suit along with proposed findings and we would in that brief call the Court's attention to the General Statutes applicable to teacher employment.

Court: All right. The only information we have in the record on transportation is that the 23,000 county pupils being transported with a day to day cost of about \$19.00 a year, plus the initial outlay for buses. Are there any more figures on that subject that would be of any particular pertinence?

Mr. Chambers: I don't think so, Your Honor. It might be that we could secure from the City bus company the number of students who are transported to and from school each day.

Court: That figure is in one of the exhibits that the defendants produced, 23,000.

Mr. Chambers: I'm talking about on the City buses rather than on the school buses. There is some testimony in the record that some of the students within the city who are not entitled to ride the school buses are being transported to [630] school by the Charlotte City buses.

Court: At city expense?

Mr. Chambers: No, at their own expense. I said that might be of some relevance but we didn't get those figures before.

Court: If the School Board wanted to go into the business of transporting more children, wouldn't they have to face the problem with either the Legis-

Colloquy

lature or constitution to get the money for that purpose?

Mr. Chambers: Unless the School Board decided to provide local funds for that purpose. The present statute does not authorize students within the city to be transported on the regular basis and if the School Board decided to get into the business of transporting students, they would either have to provide funds locally or go to the Legislature and get some statutory amendment. I know there is presently pending before Judge Stanley a suit challenging the statute of the state refusing to give transportation for students within the city.

Court: I was wondering if that issue was being tested or proposed to be tested because you ask yourself why the state would take money from the cities and spend it purely on the basis of whether you live within or without a municipality.

Mr. Chambers: It is being challenged now. The case [631] was argued and submitted to Judge Stanley.

Court: He didn't tell you how he was going to rule, did he?

Mr. Chambers: I didn't participate in the case. The case was brought by the American Civil Liberties Union.

Court: Is it a suit to restrain the spending of money to transport rural pupils?

Mr. Chambers: It's a suit to enjoin the State from continuing to appropriate funds to transport students in the county unless it provides bus transportation for students in the city. It's really an affirmative suit to get bus transportation for students in the city.

Colloquy

Court: I don't suppose there's any need in my racking my brains to think of any further questions. I'll remember the other questions after we've all broken up, but I will feel free to call counsel on both sides for any further information necessary if anything else develops that appears to be of value. Mr. Hicks reads more law than I do and he very correctly says have you given me already the names of the cases you think are the leading cases and I ought to get familiar with them?

Mr. Chambers: Your Honor, we plan to present those on Monday. What we were hoping to do in the brief was to try to trace the basis of our contentions and set out the authority we think would support what we are suggesting here. There [632] have been two recent Fifth Circuit opinions that involved areas here. The names escape me but I'll be glad to call Mr. Hicks and give them to him. They are not printed yet in the report.

Court: Is there anything later or farther out than the sentence I was quoting to you this morning from the Fourth Circuit opinion?

Mr. Chambers: There is a case out of Illinois.

Court: I mean from the Supreme Court or from the Fourth Circuit.

Mr. Chambers: Not from the Supreme Court. There's nothing later than the Green case.

Court: I read the 180,000 word opinion and I didn't see anything in it that was any farther out than that little vague suggestion in the second Brewer case. That's what you're basing this morning's evidence on, the Brewer case, isn't it?

Mr. Chambers: That's correct.

Colloquy

Court: That's where they said the District Court should consider these things.

Mr. Chambers: We would contend that it ought not make any difference whether there had been discrimination or not in the sale or rental of houses, that as long as you have this kind of housing pattern it ought to require that something else be done. I was thinking of a case in Mississippi. They [633] had a situation where whites staying on one side of town and Negroes on the other and they had a railroad running through the town as the dividing line and the School Board said we're going to integrate and drew school district lines right down the railroad track. That case went on for about eight years and the court decided they have to do more than that. There was no inquiry in the court whether this housing pattern developed from private or public discrimination.

Court: I thought a week ago when I suggested to you that I didn't think this type of evidence was material that it didn't make any difference as far as present living is concerned whether it got into this situation through one reason or another. The second Brewer opinion, which I didn't have in mind at that time, suggests that might make a difference. I'm not sure that it's good law. I'm not sure that we ought to have to go back and examine the thinking of everybody who had a little part in the present social situation in order to reach a conclusion as to whether something can or can't be done about it.

Mr. Chambers: It makes for difficult inquiry but that's what the court indicated might be done.

Court: I'm not sure that I agree with Judge Butzner's suggestion there. Well, unless there is some-

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thing further on this we'll meet again Friday afternoon. I [634] believe, isn't it, on the Anson County case?

Mr. Chambers: Yes, sir. Mr. Stein will be here Friday afternoon and I'll be ready to go with the court to Anson County Saturday morning.

Court: We had some fool notion such as that and I think we may follow through on it. Do you have evidence to present in the Anson County case?

Mr. Chambers: It's all taken in depositions and I think we can probably close the case in about an hour.

Court: Have the depositions been filed?

Mr. Chambers: They have not been filed, Your Honor. Mrs. Ferster took the depositions and she was completing the depositions for this case and she's working on the depositions for that case. Your Honor, I have one final thing.

Mr. Waggoner: I just read this.

Mr. Chambers: He knows what they are. These are principals' preliminary reports for 1968-69 and they have been certified by Mr. William Peak, the Director of Statistical Service for the State Department of Public Instruction.

Court: What am I supposed to do. . . .

Mr. Chambers: We're going to decipher that for you, Your Honor, and tell you what we're trying to show you. This is Plaintiff's Exhibit 44.

Mr. Waggoner: I have never seen these. It would be helpful to us to know what they contend. They are presented [635] at the tail end of the case and then great conclusions are going to be drawn from them. I have no idea what it's driving at. It seems

Colloquy

to me that we're entitled to some fair notice of what is involved in this lawsuit.

Mr. Chambers: Mr. Wagonner, we came by your office and went over all these exhibits and that included that. We had to order that from the State Department.

Court: I've been trying to find out what you want the Court to do for a week.

Mr. Chambers: Well, we tried to set out at the beginning of the hearing a statement of our basic contentions and what we would like the Court to do. We will try to set it out more extensively in a brief. We will try to file it by Monday.

Mr. Waggoner: It puts us to the point of preparing a brief on each little inference that might be drawn from this evidence. Would it be possible to get their brief and then, in effect, have an answer for it so we know what they're driving at.

Court: I'm thinking this might be more useful to everybody because if we do this, it will put the plaintiffs under the burden of being concrete instead of general in their request for relief. I don't want to stretch out the completion of the lawyer's part of the handling of this phase of the case, but I do think [636] it might be well to have a little gap between your filing of your request for findings of fact and proposed order and brief and the filing by the defendants. Are you going to be able to make the Monday time?

Mr. Chambers: Your Honor, we are going to try. I am going to plan to start working on it tonight.

Court: Let's modify that original arrangement to this extent, that you will be expected to file by Mon-

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day or show good reason for not doing it and that the defendants will have five days after that to file their own requested findings. Does that take a little of the strain off of everybody?

Mr. Wagonner: Yes, sir.

Court: Let's take a recess.

RECESS

Wednesday, March 26, 1969—

Mr. Wagonner: At this time we would like to examine Mr. William McIntyre.

WILLIAM E. MCINTYRE, a witness for the defendant, having first been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Wagonner:

Q. Will you give us your name and residence, please, sir? A. William E. McIntyre, 200 Middleton Drive, Charlotte.

【637】 Q. What is your official position with the Charlotte-Mecklenburg Planning Commission? A. Planning Director.

Q. How long have you held that position? A. Since January, 1955.

Q. What is your educational background? A. I graduated the University of Michigan 1938. I took post-graduate work there the following year.

Q. Have you held prior employment before coming to Charlotte in 1955? A. Yes. Before I came to Charlotte in 1955 I was employed by the Cleveland City Planning

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Commission, Cleveland, Ohio, as a City Planner. Before that I was employed by the Tennessee State Planning Commission as a City Planner.

Q. What was the condition of zoning in the City of Charlotte when you came here in 1955? A. In 1955 when I came here the City of Charlotte was zoned. It was zoned by an ordinance enacted by the City Council in 1947.

Q. Do you know how the 1947 zoning was developed? A. I know from having been told by various people who were here on the scene when I came in 1955 who were also on the scene in 1947. I have not had any direct contact with the people who prepared the 1947 ordinance but with people who were associated with people who prepared it.

Q. Would you tell us what you know of 1947 zoning? [638] A. The 1947 zoning plan was prepared by an engineer who was employed by the city. I believe the man's name was Marshall, and the zoning ordinance that he prepared covered the city as it existed at that time. The ordinance was a fairly simple one as compared to the ordinance we have today in that it established fewer classifications of uses than we now have. It had two residential districts, I think it had two business districts and two industrial districts, I believe.

Q. In that zoning code, as I understand it, residence could be built in industrial zones, is that correct? A. That's right.

Q. Now, did your office engage in any efforts to improve on the 1947 zoning? A. Yes. One of our basic purposes after we started our planning operation in 1955 was to prepare a general development plan for the city and the perimeter area that had been established around the city at that time, to prepare a general development plan, which is a guide to growth and development and then, on the

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basis of that general development plan, to establish zoning as one means of carrying out the plan.

Q. What criteria did you use zoning in preparing the new code with reference to residential housing? A. Well, we used a variety of criteria. Basically, of course, as in most zoning, we started off with surveys and studies of the community as it existed at that time so that we would [639] understand what types of development were located where. This naturally covered the residential sections of the area as they were established at that time. We surveyed these residential areas, not only to find out where residential neighborhood and development was located but also to find out the kind of development that it was in terms of density. We have a fairly wide range of residential densities here and we wanted to establish residential categories of densities via the zoning ordinance that would be compatible with the residential development that was on the ground at that time insofar as possible, and then we wanted to plan for the expansion and enlargement of the established residential areas to accommodate the new and additional population that we expected to see come into the community out to the year 1980.

Q. Now, as I understand it the criteria for zoning in a large part were dictated by the existing land uses, is that correct? A. Yes, to a very large extent they were dictated by land use. They were predominantly determined by the existing land use where we were dealing with large, built-up and established urban areas.

Q. Would this be true not only for residential but office and business and industrial categories? A. It was true, certainly, for office, business and industrial categories, but I think we always have to keep in mind that we are not only planning for what is there but also for what [640]

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is to come with the growth and development of the community. But certainly our zoning plan was guided very much by the types of development, industrial, business or office, that we found in various locations at that time.

Q. What effect, if any, did the industrial zoning proposed and subsequently adopted have with reference to the 1947 industrial zoning areas? A. There was a very substantial cut-back from industrial zoning to residential zoning particularly as it related to some of the residential areas that were already established in the community. We found that quite a few areas that were established as residential sections had been zoned as industrial areas by the 1947 ordinance and we were concerned to forestall the invasion of industrial development into these areas by changing the zoning of those areas from industrial to residential.

Q. Would it be fair to say that you substantially reduced the amount of industrial zoning in the residential areas?

A. Yes.

Q. Do you have in mind any particular areas? A. Well, I remember that the section known as Greenville was entirely zoned industrial by the 1947 ordinance and we eliminated most of the industrial zoning that covered that area. The section known as Brooklyn in the city was entirely zoned industrial by the 1947 ordinance and we eliminated that [641] industrial zoning and changed it to combination of business and office zoning in view of the forthcoming redevelopment of that particular area that was known at that time. We changed from industrial to residential some sections of First Ward also.

Q. With reference to the 1947 zoning code, were there substantial inroads of industry to residential areas? A. No, I don't think there was very substantial inroads of

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industry into the residential areas, particularly those that I have described. We changed from an industrial zoning to a residential zoning.

Q. In coming up with your present zoning map were racial considerations involved to any degree? A. No.

Q. I next hand you a map from Plaintiff's Exhibit 12, which is captioned General Development Plan, which I understand to be the twenty year projection of zoning for your office. I'll ask you if the zoning indicated on that map is substantially identical with existing zoning in the City of Charlotte and perimeter area. A. I think I must correct the impression of what this map is. This is not a zoning map so I can't respond to your question which implied that this is a zoning map. This is a general development plan map. It is an indication of the planned uses of land and of the major traffic arteries that would be [642] compatible with and would serve the planned uses of land. This map provided us with the basis to formulate zoning for the area on a planned basis, on the basis of an established plan for the community. Now, I've forgotten your question.

Q. All right, sir. With reference to the area in blue which the legend indicates to be commercial and industrial are these blue areas substantially identical with the existing zoning ordinances of Charlotte-Mecklenburg Planning Commission? A. Very substantially. There are some changes, few changes here and there, but they are comparatively small in the context of the total industrial zoning scheme.

Q. Would there be as much as a 5% deviation from this? A. Possibly. I don't think it would be much more.

Q. Is the business zoning or business land use indicated on this map substantially in accordance with existing zoning? A. I think substantially, yes.

William E. McIntyre—for Defendant—Direct

Q. With reference to residential, is it substantially in accordance with existing zoning? A. Substantially, yes.

Q. Does this general development plan reasonably depict the existing zoning in the City of Charlotte today? A. Yes. I think it should be pointed out, however, again that this is a general development plan and the zoning is much more specific and much more precise with respect to individual properties. The zoning is developed on a much more detailed [643] map. As a matter of fact, it's developed on about 63 or 68 section sheets where we can see every lot and every last street in some detail. Also I think it ought to be pointed out another difference between this map and the other zoning is that this map proposed residential areas in general. The zoning map specifies what kind of residential areas in terms of single family, multi-family and in terms of the density of the residential areas.

Court: You say this map shows all residential areas in the same color whereas the zoning is in grades of residence.

A. Yes, sir.

Court: Concentration?

A. Right.

Court: The substantial portions of this are in yellow, are they?

A. Yes, sir.

Q. Do you employ zoning districts in preparation of zoning? A. Yes. We establish a district structure as a basis for zoning the area.

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Q. With reference to your general map, which indicates area 1, 2, 3, 4 and so on, are these zoning districts? A. You're not referring to this map.

Q. No. A. Yes. Those maps do show zoning districts.

【644】 Q. Would you give me a definition of zoning districts as used by your office? A. A zoning district is an area in which there are specific regulations established for that district that are different from the regulations that are established for other districts. By way of illustration in terms of residential zoning districts, in the present ordinance we have R-6 districts, R-9, R-12, R-15.

Court: What do those mean?

A. The R-6 district means that a minimum lot size is required for a residence—

Court: Yes, I remember. That 6 indicates lot area in thousands of square feet.

A. Yes, sir.

Court: If a piece of land is zoned R-6 it means that any single family house in that area has got to have 6000 feet of real estate under it.

A. Yes, sir. Also, continuing in response to your question, using the same structure, R-6, R-9, R-12, within each of these districts there are different dimensional requirements that are established for set-back of buildings, amount of yard space, offsets from side and rear property lines, and to some extent there are differences in uses permitted within the district, although the district is essentially a residential one.

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【645】 Q. As I understand the zoning maps maintained in the Building Inspection Office, there is a key map and then there are pages within that book. Are these zoning districts? A. Yes.

Q. Each one of the pages would be a separate zoning district? A. Oh, no. Each page shows the zoning of the territory that is on that page. Now, on one page you may have quite a number of different types of zoning districts. In other words, the maps aren't structured, the area isn't divided up by a set of maps showing only one district on a map. The area is divided up by geographic sections and then the map shows whatever zoning districts happen to fall within that section of the community.

Q. Would it be fair to say these are conveniently sized areas that will fit on one of the zoning map pages? A. Yes.

Court: District is the term to indicate the use of the land instead of a general geographical section of the city.

A. Yes, sir.

Court: You may have an R-1 district adjacent to an office and business district in the next block.

A. Right.

Court: But it would all show on one section of the zoning map.

【646】 A. Yes, sir.

Q. Mr. McIntyre, some criticism has been made of this existing zoning, stating that an industrial buffer zone sep-

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arates the southeastern and northeastern parts of the city. Why does this industrial zone exist through the center of the community? A. Well, the industrial zoning exists through the center of the community for many reasons. Many of these reasons, of course, are historical ones. Through the center of the city and running practically parallel with the industrial zones that divide the city, you'll notice that we have one, two, three or more major traffic arteries that parallel this so-called industrial buffer zone, which I think is not a buffer zone. Also some of the mainline railroads, particularly the Southern Railway and the Norfolk & Southern Railroad, traverse this corridor. The existence of the railroads through that area for a great number of years resulted in a fair amount of industry concentrating within that corridor. When we did the surveys for the land development plan that we have here and for the zoning that followed it, we found a very substantial amount of industry already established in that corridor that cuts across the city from northeast to southwest. The fact that the industry was already there really established the core of this feature. It was really on the ground before any comprehensive planning was done in the area.

Q. I next direct your attention to the area south of Wilkinson [647] Blvd. which is zoned industrial. What criteria were used in establishing that as an industrial area? A. Three criteria, or four, really. One, existing industrial uses in the area; two, a railroad practically paralleling Wilkinson Blvd. to the south. Wilkinson Blvd. itself is a heavy duty traffic artery which is an asset for industrial development, to bring the heavy concentrations of traffic into and out of the industrial area, and is a highly useful facility for industrial development in that corridor; and finally, on the westerly side of the area south of Wil-

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kinson Blvd. and south of the Southern Railway you will notice that's the location of the airport and the airport with its noise and industrial character dictated that the land immediately north of the airport be used for industry rather than for residence which would have been bothered considerably by the noise emanating from the airport and the aircraft flying overhead.

Q. I next direct your attention to the area bounded roughly by Graham Street, Interstate 85 and Statesville Road. What criteria were used in establishing that as an industrial area? A. That area had several characteristics that in our judgment indicated it would be better used for industry than residence. On the Statesville side of the area there had long been established a city dump which would not make the area very suitable for residential development in the immediate proximity. [648] The southerly portion of the area there was established Attando Industrial Park. North Graham Street and the Southern Railroad on the easterly side of the area provided a plus for industrial development and use, and Interstate 85 also provided a useful facility for the industrial type development.

Q. When this area was zoned was there any substantial residential development in this area? A. There was scattered residential development in this area. It was quite scattered, very thin, and taking the area as a whole, it was essentially a vacant area.

Q. I next direct your attention to the area bounded roughly by Piedmont & Northern Railway and N. C. 16 and the contiguous area zoned industrial and ask you what criteria were used in zoning that area industrial. A. Again, our industrial zoning was in part conditioned on the fact that there was industrial development in the area at the time. The area is traversed by two railroads, Piedmont &

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Northern Railroad and the Seaboard Railroad, and N. C. 16 and Mount Holly Road were major traffic arteries which it's desirable to have to provide access into and out of industrial areas.

Q. I'll ask you if there is a tank farm located in this area.
A. Yes. On the westerly end of that area colored in blue there is an oil tank farm.

【649】 Court: You're talking about the oil depot at Thrift?

Mr. Waggoner: Yes, sir.

Q. Mr. McIntyre, some criticism has been made with reference to the zoning roughly bounded by Statesville Avenue, Highway 16 and Interstate 85 with reference to smaller lots for the zoning in that area. Could you tell the Court the reason for such zoning? A. Well, when the zoning was done again we were influenced to a very substantial degree by the established pattern of development and the established pattern of the development in that area consisted of comparatively small lots. I think the lots were generally probably in the vicinity of 6000 square feet, plus or minus. Naturally no area is developed with a completely uniform size lot, but the lots did range towards the lower level of lot size.

Q. Then was the purpose of zoning to merely zone in accordance with existing land use there? A. Yes.

Q. Did you participate with the Redevelopment Commission in its action in having the Brooklyn area removed of houses? A. Yes. The Planning Commission has the responsibility under State law of certifying that an area is blighted before the Redevelopment Commission can go into the area and acquire it. We did, then, make a finding that

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the Brooklyn area was a blighted area under the provisions of North Carolina statutes [650] and therefore eligible for redevelopment.

Q. What criteria did you use in establishing areas of blight? A. We used the criteria that are established by the State law and that is that we must find, in order to determine that an area is blighted we must find it is old, dilapidated, deteriorated, obsolete, and a finding also be made that because of the age and obsolescence of the physical structures in the area that these produce adverse consequences in terms of health, morals, safety, welfare, as they effect the people of the area.

Q. And you certify this to the Urban Redevelopment Board and they in turn submit their application, is that correct? A. Yes.

Q. With reference to the Brooklyn area, did you participate in this Urban Redevelopment project? A. Yes.

Q. How did the Brooklyn area compare with other areas in Charlotte? A. Well, the Brooklyn area was one of the most seriously blighted sections of the city when we studied it back several years ago. So it compared in that sense, it compared very unfavorably with most of the residential sections of the community. There were, however, other similarly blighted sections in the city at that time.

Q. Could you tell us some of the other blighted areas? [651] A. The First Ward area.

Q. Has that subsequently been cleared~~also~~? A. No. The First Ward area has not been cleared through Redevelopment. A part of the First Ward area has been cleared and rebuilt with public housing, but that clearance did not take place through the Redevelopment processes or statutes. The Greenville area is a seriously blighted area; sections off of West Morehead Street on the west side of

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the central business district are seriously blighted sections also.

Q. Are all of these areas scheduled for demolition of the buildings or have already been demolished? A. Not all of these areas are yet scheduled for Redevelopment. The First Ward area is scheduled for Redevelopment. The Planning Commission has made a finding that area is eligible. A bond issue was passed by the voters, I think two or three years ago, which set up the funds to defray the cost of doing that work. The Greenville area, we have since officially certified as a Redevelopment area and the Redevelopment Commission at the present time is at work on plans for the redevelopment of that section.

Q. Are or were the districts you have just described as blighted principally populated by Negroes? A. Yes.

Q. Would it be fair to say they have moved into better housing from these blighted areas?

【652】 Mr. Chambers: I object to that.

Court: Overruled.

A. Well, I personally don't know where the people have moved when they have left the areas. This is a responsibility of the Redevelopment Commission and I am not directly involved in that process. I think all I can say about it is the Redevelopment Commission operates under a mandate from the Federal Government which says that they are required to assist in the relocation—

Mr. Chambers: Your Honor, I object to that. We can submit the mandates of the Federal Government and we don't think this witness is qualified to state what the rules and regulations of HEW are. In ad-

Colloquy

dition, he already stated he didn't know where the people moved and he certainly wouldn't be able to state if the Redevelopment Commission has carried out the requirements of HEW.

Court: Let me ask a question and see whether this matters. Your contention as it relates to this case is that they were moved to particular locations and followed there by the School Board. Isn't it a plain fact that the quality of the housing into which people have been removed by this process is generally superior to the housing they formerly occupied?

Mr. Chambers: That's what we contend is not the case, [653] Your Honor. We have not attempted to make an offer of evidence on the condition of the houses. The position that we took—

Court: Do you remember what the houses in Brooklyn looked like?

Mr. Chambers: Yes, sir. I also remember what those looked like in Greenville.

Court: Greenville hasn't been redeveloped, has it?

Mr. Chambers: They have removed some of those houses in Greenville, not all of them, and they removed some of the houses in First Ward, not all of them. I also know something about some of the conditions of the housing into which these people have moved. We have not attempted to make any showing with respect to that because we didn't think it was particularly relevant in this proceeding. The thing we're objecting to now is the witness clouding the record with what HEW requires without being able to state whether the Redevelopment Commission has complied with that regulation.

Court: Well, I understand he says he hasn't in-

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spected the houses. I'll let him go ahead and tell what he understands the requirements to be.

A. I understand the requirements to be that the Redevelopment Commission must attempt to relocate the people into decent, safe and sanitary housing that's within their economic means.

【654】 Q. Does the Urban Redevelopment Board actually place people in specific homes or do they simply offer assistance? A. My understanding is that they offer assistance. They cannot direct people to live in any particular location.

Q. Now, it's been stated in this case that railroads are not essential to industrial development or industrial zoning. Is this—

Mr. Chambers: Your Honor, I object to that. That's not a true restatement of what the witness stated.

Court: Well, ask the witness to testify as to his knowledge or understanding about the role of railroads in industry, whatever he knows about that. Do it briefly, please.

Q. Will you tell the Court the role the railroad plays in industrial zoning? A. The railroad played a very significant part in industrial zoning in this community. We found a great deal of our established industry when we started to work here was located adjacent or in the vicinity of railroads. So that has a very substantial effect upon industrial zoning.

Q. I next hand you Plaintiff's Exhibit #13, which I understand to be the major thoroughfares proposal or plan,

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and I ask you if you had any participation in the preparation of that plan. A. Yes.

【655】 Q. What participation did you have? A. We participated in this as a part of the comprehensive planning of this whole area, together with transportation planner consultants, State Highway Department, City Traffic Engineering Department and City Engineering Department. It was a collaborative effort on the part of those agencies.

Q. With reference to the north-south expressway, what criteria were used in locating that particular thoroughfare? A. One of the essential facts in the location of this is that this was a part of an interstate route.

Court: You're talking about the north-south expressway or the northwest expressway?

A. North-south expressway.

Court: That's the one down here?

A. Yes, sir.

Court: Is that the one that destroys a part of the golf course?

A. I don't recollect the golf course being destroyed by it.

Court: Go ahead.

A. A part of this route was influenced by the fact that it was to become part of Interstate 77, a route that goes up into Cleveland, Ohio, or coming down from Cleveland into this area. The route was otherwise influenced by the need for a north-south expressway route through the commu-

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nity to expedite traffic in that direction. The specific location of the route [656] in the northern half, you might say, from the central business district up to the rest of the area, was influenced by the fact that there was vacant land along Erwin Creek Valley and this provided a comparatively inexpensive location and a location that would disrupt existing development to a more moderate degree than might otherwise have been the case. The location of the route from the central part of the city southward was influenced to some extent by the open space available that comprised Revolution Park and also I think it was influenced by the fact that it was desired to get it as close to existing development as possible without running through extensively developed areas. The area immediately to the east of this expressway is substantially developed. That's the area to the east of Pineville Road, so there is a comparatively open corridor through this area where the north-south expressway was located. Finally the southerly end. The location was influenced to some degree by the fact that Arrowwood Industrial Park had been established in that section and again it was felt that the expressway coming up, actually running along the side margin or in the side margin of Arrowood Industrial Park would provide a heavy-duty, high level traffic carrying facility to serve the great deal of traffic that is expected to be generated by industrial development in that industrial park.

Q. Are you aware of any racial considerations in the location of [657] of the north-south expressway? A. No, sir.

Q. With reference to the other expressways in the city and proposed thoroughfares, were any racial considerations made in proposing this plan? A. No, sir.

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Mr. Waggoner: You may examine him.

Cross Examination by Mr. Chambers:

Q. Mr. McIntyre, would you state for the record what city planning is? A. City planning is the comprehensive planning of a community with the effort to develop a good community for people to live in, a valuable community economically.

Q. It's mapping out land usage, whether it should be used for industry, business, office or residence? A. That's a part of city planning.

Q. What other considerations do you have? A. Well, I think basically when we start off our planning we are concerned with determining how many people we are going to have to provide for in a community. We're concerned about the economy of the community and what planning can do to assist and foster the economic development of the area. We're concerned about provision of utilities and facilities that are necessary for good urban living. We're concerned about open [658] space and recreation. We're concerned about the elimination of developments that aren't good for the community such as blighted areas. We are interested in things like the revitalization of the central core of the community. Planning is a fairly diverse matter and it's expressed in different ways, I think, in different communities.

Q. Taking residential areas, what factors would dictate that a particular area be zoned as residential? A. The principal factor to start with is whether an area is residential today or whether it isn't. If an area is residential today, then I think in all probability it would be zoned residential unless with the anticipated growth and development of the community there would be some reason for

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planning a change of that residential area to some other kind of activity or use. It's possible, for instance, that—let's say in a central city area, that an expansion of the downtown with the growth of the community might take over and replace a residential section. Does that answer the question?

Q. The basic thing that you mentioned is the existing land use. If it's presently residential, it probably would be zoned residential. Is there anything else that you consider in determining whether to zone a particular area residential? A. Yes. We consider the quality of the environment in the area; we consider the suitability of the land for residential development; we also consider the desirability of establishing [659] residential areas in comprehensive enough fashion so they are more or less self-protecting. I don't know whether that makes much sense or not but we like to establish fairly sizeable residential areas to the extent possible. We like to establish residential areas of a size that can be easily served with schools, for instance, and parks and playgrounds and recreational facilities. These are some of the other factors that are taken into consideration.

Q. In an instance where you have an existing residential area that you propose to zone to industrial or commercial, is there a corresponding residential area created somewhere else in the city? A. No. No, I wouldn't say that.

Q. How do you plan for accommodating those persons who are zoned out of the residential area? A. Well, taking our own plan as an illustration, we knew that we had many thousands of acres of land that we were going to allocate to residential use. As a matter of fact, in the planning process we distributed the anticipated population over this planning area to know where people would be located,

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or rather to know that we had space for residential use and development.

Q. We'll come back to that. In the zoning of residential areas—

Court: As I understand your answer you said that you don't automatically create another residential zone if [660] you cut into a residential area for business or industrial purposes, but you also said that when this redevelopment took place you did establish some other residential areas in other parts of the city.

A. No, sir, I didn't say that.

Court: Well, I heard you two ways and I'm just asking you to tell me again what you just got through saying. I misunderstood you, obviously, so just what did you just get through saying?

A. I said when we found a residential area we felt was going to be eliminated we did not make a specific provision for the relocation of this residential neighborhood to another place. What we did and what we do in our planning is allocate residential land on the basis of anticipated need for housing developments, whether they be by relocation of people from established residential areas or new influxes of population. In other words, our planning is not to say specifically we'll eliminate residential neighborhood located on spot X and we'll plan to put residential neighborhood located on spot X out here at the intersection of Y and Z. We do not do this type of specific planning.

Court: What you're saying is you have enough residential space in your overall plan but you don't

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try to put people in a particular place if they are kicked out of one neighborhood.

【661】 Q. That's right.

Q. Mr. McIntyre, you say that you zone areas residentially R-6, R-9 and R-12. What dictates besides existing land use whether a particular area should be zoned R-6 or R-9 or R-12? A. In addition to the existing zoning we are influenced, I think, to a very large extent by the established character of the area.

Q. What do you mean by the established character of the area? A. Whether it's a high income area or a low income area. We're influenced to a very large extent by this. We are also influenced by the need for various kinds of residential type of developments. For instance, we know that we have to have low and moderate cost housing for some people. We know that higher cost housing is available to other people and this influences the amount of ground space that people can afford and the kind of development they can afford to have and the amount of ground space, of course, is reflected in the zoning plan, R-6, R-9, R-12, and so forth.

Q. The multi-family zoning, I gather, would follow somewhat your same criteria. In other words, you think that you have to have a certain number of units for low income, middle income families and R-6 MF would be dictated by that, and if you were planning expensive apartment units or multi-family units you would zone it R-12 or R-20, is that right? A. Right.

【662】 Q. Now, what effect, Mr. McIntyre, would planning for the zoning of a residential area as industrial have on the land value of those homes, or the value of the homes in those areas? A. Planning a residential area for industrial, what effect would it have on the value of the homes?

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Q. That's correct. A. I am really not sure. I think it would vary a lot with different cases. I'm not in the real estate business and I don't really deal in property values as such.

Q. Let's take an instance. The 1947 zoning ordinance zoned all black residences industrial. A. Uh huh.

Mr. Waggoner: Objection.

Court: What was the answer? The objection is overruled.

Q. What effect would that type of zoning have, Mr. McIntyre, on the home values in those areas? A. Again, I really don't know what effect it had on the values because I've never made any studies of values of homes in such a situation as contrasted with the opposite situation where those homes might have been in a residential area.

Q. I think you indicated that residences could be built in industrial zoning under the 1947 ordinance. A. Right.

Q. Would not the industrial zoning also allow for other land [663] uses or variations, for instance, multi-family dwellings? A. Yes. In the industrial zones as they were established at that time you could have single family, multi-family dwellings, business. In other words, the industrial zone was really a mixed use zone. It allowed practically all uses that you might find in a city to locate there.

Q. Isn't it also true that the 1947 ordinance zoned basically all of the white residential areas residential? A. Basically, yes.

Q. Mr. McIntyre, isn't it true that this kind of zoning would effect the land value of the black residences, they being zoned industrial and the white being zoned residential? A. I really can't answer that. I don't know how it

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affects the land value because when you say land value I assume you mean land value and not building value.

Q. I'm talking about the value of the homes themselves, rather than the land. A. I really don't know for a fact.

Q. Would one anticipate in your area, Mr. McIntyre, the same value being assessed to a home in an area zoned industrial or zoned for multi-family use as a home in an area zoned for residential use with perhaps an R-12? A. The same assessed value. . . .

Mr. Waggoner: If the Court please, we'll object to this there is no . . .

【664】 A. I really don't know. Again, I don't deal in assessed valuation.

Mr. Waggoner: You have to deal with specific properties. Some industrial zoning change would enhance value and some would decrease it.

Court: The question relates to the value of the home, independent of any industrial value that might be attached to the land on which it stands. Do you want to stipulate an answer to this or do you want me to come in with some other witness by deposition to cover the point?

Mr. Waggoner: If the Court please, I really don't know the relevance of the depreciation or appreciation of value of homes in a school case of this type.

Court: I don't know that it is but it is a point under consideration. Do you want to stipulate that the answer to the question is that if you put an industrial zoning on a neighborhood where people live the value of the property for dwelling purposes is less than if it was zoned for residential?

Colloquy

Mr. Waggoner: No, sir, I don't think that is a true statement. People are appearing before the Zoning Board all the time trying to get changes of zoning from residential to business to industrial. Industry likes to locate where people live so they have a supply of [665] people coming in, so I don't think you can make a general statement of that kind.

Court: Why don't you just get an affidavit from somebody who will answer the question of some knowledge and submit it to the defendant and see if they will agree to introduction of the affidavit or any other affidavit they want to put in on that subject. I don't want to have another hearing because I think this is a routine point. Your point, Mr. Waggoner, is that land may be worth much more because of industrial zoning and, of course, that's true. Mr. Chambers' point, as I understand it, which he is trying to show, is that the use of that land, when that land is used for people to live in the value of the homes on that land is less because of industrial zoning. I would think that both of those propositions would be true without argument. If you can't stipulate it, both of you get affidavits to cover it and save a little time. Maybe the question is off base. Maybe desirability and attractiveness are more important than money value, but I think you're both right. I don't blame either one of you for stopping where it is and try to cover it by affidavit so we don't spin our wheels on it.

Mr. Waggoner: We would be willing to stipulate that, depending on the land, it may be worth more or it may [666] be worth less, which is pretty much of a nothing statement as far as I can see.

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Mr. Chambers: Your Honor, I think we've already got this particular point in by Mr. Rabin.

Court: I don't remember what was said on that subject. Mr. Rabin was the man with the Van Dyke beard!

Mr. Chambers: That's right.

Court: Go ahead to something else.

Q. Mr. McIntyre, as Planning Director do you have occasions to go out into the community to view the residential areas and the industrial areas? A. Yes, sir.

Q. You indicated that in the planning for the 1962 zoning ordinance that you did extensive investigation of existing land use. A. Yes.

Q. Didn't you on this occasion, Mr. McIntyre, have occasion to determine whether the residential areas were white or black? A. We made no particular note of this.

Q. You know, though, Mr. McIntyre, that blacks stay out Beatties Ford Road? A. Certainly.

Q. And that whites stay over in Myers Park? A. Certainly.

Q. You know, too, that most of the blacks in the city stay west [667] of Tryon Street, north and south? A. Right.

Q. And that most of the whites in the city stay east of Tryon Street. A. Right.

Q. Now, is there on the west side of Tryon Street any residential zoning R-12? A. Yes, I think there is.

Q. Would you be able to pick out that section?

Mr. Waggoner: If the Court please, we have a zoning map here he might like to refer to.

A. I happen to recall the section west of Little Rock Road I'm fairly sure is zoned R-12 and up off N. C. 27 there is

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a section that I believe is zoned R-12. They are the only ones that I can recall.

Q. This is the index to the zoning ordinance. A. That wouldn't tell me. That's an index. It doesn't show the specific zoning.

Q. Would you be able to get from this the area you are referring to? A. Yes. As I recall, and this is from memory, I think we have places in map 41 and map 38 that are zoned R-12 and I believe on map 42 there are also places, areas that are zoned R-12.

Q. Looking at 38, the area you are talking about being zoned R-12, would you state whether there are any residences in that area [668] presently? A. Yes, there are.

Q. Are they black or white? A. To the best of my knowledge they are white.

Q. You're looking at map 38? A. Right.

Q. Would you look at Map 41. In the area zoned R-12 would you state whether there are presently any residences in that area? A. Yes, there are some residences in that area.

Q. Would you state whether they are black or white. A. To the best of my knowledge they are white. I don't know. I haven't made a survey of them.

Q. Mr. McIntyre, do you know of any black residential areas zoned R-12 in the City of Charlotte? A. In the City of Charlotte, no, I don't.

Q. Now, I believe that areas like Northwood Estates, Dalebrook, University Park were developed subsequent to the 1962 ordinance. A. I think they were.

Q. I believe that your comprehensive plan, the Next Twenty Years, which is Plaintiff's Exhibit 12, was published prior to 1962 or published in 1962. A. Prior to.

Q. Why didn't you in the planning at that stage, Mr.

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McIntyre, plan for some R-12 zoning in some black residential areas? **【669】 A.** What?

Q. Strike that. Does your office also in its planning, Mr. McIntyre, plan for recreation? A. No, we do not have any official responsibility of planning for recreation. We do upon request and rather infrequently, as a matter of fact, collaborate with the Park and Recreation Commission on a specific question, but the responsibility for planning for recreation is theirs.

Q. In your twenty year comprehensive plan did you set aside some areas for parks? A. No. The Twenty Year Plan does not indicate a park plan. It recognized some of the major existing parks as features of land use and the closest it came to expressing anything on parks aside from that was our recommendation that the low lands along streams that are subject to flooding be kept open and hopefully some of these might have been used for community open space or recreation. But it was not a specific recreation recommendation, it was rather a recommendation of what we felt the appropriate use of the land would be, not to be intensively developed.

Q. You indicated earlier that city planning involved comprehensive proposals dealing basically with everything in terms of land use. A. Right.

Q. And your testimony now is that you don't set aside areas in **【670】** comprehensive planning for parks and recreation? A. We do not have that responsibility here although this is normally considered a part of comprehensive planning in city planning.

Q. In your Twenty Year Plan you just didn't do that. A. That's right.

Q. Now, would you look again at the map Plaintiff's Exhibit 12. Now, comparing this map with the map for 1947

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and the residential areas then existing, the proposed industrial zoning will carve out a substantial part of the residences, would it not? A. What do you mean carve out?

Q. Would eliminate. A. The industrial proposals here would eliminate a substantial part of the existing residences?

Q. Yes. A. No, I don't think it would eliminate a substantial part of the existing residences. As a matter of fact, I think to a greater extent existing residential areas were put into residential zoning districts than the opposite.

Q. You're talking about the change from the 1947 ordinance A. Right.

Q. I'm talking about the existing land use at the time that you proposed this plan.

Court: I thought your first question was asking for a [671] comparison between the Twenty Year Plan and the '47 zones.

Mr. Chambers: No, sir. I was trying to establish, if I could, that the proposed Twenty Year Plan would cut out a lot of the existing residential areas.

A. It would cut out the Brooklyn residential area because it was anticipated that would be redeveloped at the time. It would cut out a residential area over off of West Morehead Street, which is here indicated to become an industrial area. The reason for that is that we thought this was not a suitable place for housing and that that area should be cleared of the slums that were there and redeveloped for industrial and commercial purposes. It would be more appropriate to the character of that area. The other displacements of residential development by our industrial area plan I think are comparatively minor and fragmen-

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tary here and there. I can't identify any major areas of residence that was to be replaced by industrial use.

Q. Now, the industrial band that runs along Tryon Street and then along the Southern Railroad, I think you said you would not describe that as a buffer zone because of the proposed interstate routes or expressways running through the city? A. I wouldn't describe it as a buffer zone because I think it's a use that stands on its own two feet. I don't think it serves the purpose as a buffer at all. It serves the purpose of a [672] legitimate function and not a transition, which is my understanding of the term buffer.

Q. Does it not, in fact, form a dividing line between the black residences and white residences of the City of Charlotte? A. The blue area along Tryon Street, that's the question?

Q. That's correct. A. Would you state that question again, please?

Q. Does it not, in fact, form a dividing line between the black residents and the white residents in the City of Charlotte? A. Well, I don't know what it does today. At the time that this plan was done, if I am not mistaken, the residential areas between North Graham Street and Tryon Street that are indicated on this map were white residential, so that the blue industrial strip in that context is not separating white from black but rather white from white. Now, this may be separating there today. I don't know whether that area is changed from white to black or not.

Q. Even in 1962 the substantial majority of the whites in the City of Charlotte resided on the east side of that line, did they not? A. Oh, yes.

Q. And the majority of the blacks in the city resided on the west side of the line. A. Right.

William E. McIntyre—for Defendant—Cross

Q. If you were to give the Court some division between the black [673] and white residents of the City of Charlotte would you not use that line? A. Yes, I think that would be a fair description to say that the black residences lie to the west of Graham Street and the white residences lie to the east of Tryon Street.

Q. Going further, Mr. McIntyre, in designing or planning for zoning don't you try to get some residences and then you perhaps might have some land office use or some business zoning before you get to the industrial zoning to provide some kind of buffer between the residences and the industrial area? A. To the maximum degree possible we do try to do this. We try to either have a transition kind of zoning district from industrial into residential or we try to capitalize on some existing natural feature in the ground—a stream course or something like that—that would help to make an easier transition from industrial activity to residential activity. To a large extent we use a light industrial district classification adjacent to residential areas.

Q. It makes for a more palatable home situation to have residential areas that are sort of protected from industrial areas either by office use or some light industry or business.

A. Yes, sir.

Q. Looking at Plaintiff's Exhibit 12, the map, you have an industrial zone bordering on the east or northeastern part of the Billingsville or Griertown area. [674] A. Yes.

Q. I think Griertown is basically all black. A. (Shakes head affirmatively.)

Q. I think the adjacent areas are basically all white.
A. Right.

Q. Does not the industrial zone form a buffer between the black residents in Griertown and the white residents

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on the adjoining area? A. Well, I think it forms a different use district but I wouldn't say that it's a buffer. Again, I don't regard industrial districts as a buffer in that context.

Q. Now, looking on the west side of Griertown, I believe there are only two entrances into the Griertown area, or perhaps one off Randolph Road. A. Yes.

Q. It wouldn't be necessary to have a buffer or anything in that area, would it? . . . between the black residents of Griertown and the white residents in the adjacent areas. A. It wouldn't be necessary as far as I'm concerned. It's not necessary to have a buffer anyplace for that purpose.

Q. I don't believe that anywhere along the railroad track on the eastern part of Griertown other than adjacent to Griertown that the Planning Commission planned any industrial zoning. A. To the east of Griertown?

Q. Right. [675] A. How far east are you including in your view?

Q. I'm looking basically at the street Beale Road and going as far north as Briarcreek.

Court: Going which way?

Mr. Chambers: Going northwest.

Court: Along 7th Street?

Mr. Chambers: Along Seaboard Railroad from Beale Road to Briarcreek.

Court: Coming back into town.

Mr. Chambers: Yes, sir.

Q. Nowhere else along that railroad track is there any industrial zoning in that area, is there? A. Not within that area.

Q. Now, running down Southern. . . .

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Court: Is Briarcreek the road which crosses 7th Street at Firemen's Hall or is Briarcreek the one further down?

A. It crosses at the Firemen's Hall.

Court: You're talking about a distance of a half-mile or less?

Mr. Chambers: I think it is.

Q. Mr. McIntyre, you indicated that you determined blighted areas for the Urban Renewal Commission in the City of Charlotte. A. Uh huh.

Q. And you determined that Brooklyn and First Ward and Greenville and I guess an area we might describe as Dilworth were [676] considered blighted areas. A. Yes.

Q. Did you determine also in your investigation whether there were available homes to which the residents in these areas could move into? A. No.

Q. You indicated a moment ago that when you closed out or changed an area from residential to commercial or industrial you didn't really create another area residentially into which these people could move but anticipated that you had enough residentially zoned areas for the residences that would be necessary. A. Right.

Q. Do you know, Mr. McIntyre, whether Negroes in this community have had some difficulty in securing homes in white or predominantly white residential areas? A. I don't know personally. I understood this to be the case but not through my own professional experience.

Q. You also have seen, have you not, Mr. McIntyre, that at least up through 1968 the Charlotte News and Observer, the Charlotte News advertised homes and apartments for

William E. McIntyre—for Defendant—Cross

sale on the basis of race. A. Yes.

Q. Is it not also true, Mr. McIntyre, that many of the developers for private homes have developed sections for Negroes and [677] sections for whites? A. That appears to be the case.

Q. Now, in the Urban Renewal that has taken place in the City of Charlotte did you know that the Negroes who have been relocated have been relocated in predominantly or all Negro residential areas?

Mr. Waggoner: Objection, he already stated he didn't know where they went.

Court: Overruled.

A. I don't know personally where they went.

Q. If the Court were to find, Mr. McIntyre, from the evidence that's already in the record that the Negroes who were relocated from Brooklyn and who have been relocated from First Ward and from some other residences that have been effected by the expressway in all Negro areas, in your opinion would this further segregate the racial housing pattern? A. Certainly, if this were true.

Q. Now, in the relocation of these families has the City Planning Office taken into consideration the fact that the people involved might not be able to secure homes in any area of the city but would be limited to certain areas? A. No. We have not been particularly concerned with this because this is again the responsibility of the Redevelopment Commission to provide for the relocation of families.

Q. You therefore did not consider whether without adequate [678] planning and preparation Urban Renewal of particular areas would create more blighted areas in the city rather than really relieve the city of blighted areas?

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Mr. Barkley: I believe I'll object to that. That's an assumption.

Court: Objection is overruled.

A. Restate the question, please.

Q. I'll withdraw the question.

Court: Mr. Chambers, are you anywhere near finished?

Mr. Chambers: Yes, sir.

Court: I have an appointment that I made before we set this hearing and I ought to leave if this is going to take more than five minutes or so.

Mr. Chambers: As a matter of fact, I'll stop now.

Court: Do you have any further direct examination?

Mr. Waggoner: No, sir.

Court: I don't want to shut you off. I want you to make a record I can read and I had in mind if it's going to go on more than another five minutes or so I'll ask Mrs. Berger to write this up today. But if you think we'll be through in another five minutes or so, I'll stay.

Mr. Waggoner: We have no further questions, Your Honor.

Mr. Chambers: We have no further questions.

Court: Thank you all for coming early, I appreciate it.

* * * * *

**Opinion and Order dated April 23, 1969 Regarding
Desegregation of Schools of Charlotte and
Mecklenburg County, North Carolina**

PRELIMINARY SUMMARY

The case, originally filed in 1965, is now before the court under the "MOTION FOR FURTHER RELIEF" filed by the plaintiffs on September 6, 1968. The motion seeks greater speed in desegregation of the Charlotte-Mecklenburg schools, and requests elimination of certain other alleged racial inequalities. Evidence was taken at length on March 10, 11, 12, 13, 17 and 26, 1969. The file and the exhibits are about two and one-half feet thick, and have required considerable study. In brief, the results of that study are as follows:

The Charlotte-Mecklenburg schools are not yet desegregated. Approximately 14,000 of the 25,000 Negro students still attend schools that are all black, or very nearly all black, and most of the 24,000 have no white teachers. As a group Negro students score quite low on school achievement tests (the most objective method now in use for measuring educational progress); and the results are not improving under present conditions. The system of assigning pupils by "neighborhoods," with "freedom of choice" for both pupils and faculty, superimposed on an urban population pattern where Negro residents have become concentrated almost entirely in one quadrant of a city of 270,000, is racially discriminatory. This discrimination discourages initiative and makes quality education impossible. The quality of public education should not depend on the economic or racial accident of the neighborhood in which a child's parents have chosen to live—or find they must live—nor on the color of his skin. The neighborhood school concept never *prevented* statutory racial segreg-

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tion; it may not now be validly used to perpetuate segregation.

Since this case was last before this court in 1965, the law (or at least the understanding of the law) has changed. School boards are now clearly charged with the affirmative duty to desegregate schools "now" by positive measures. The Board is directed to submit by May 15, 1969 a positive plan for faculty desegregation effective in the fall of 1969, and a plan for effective desegregation of pupil population, to be predominantly effective in the fall of 1969 and to be completed by the fall of 1970. Such plan should try to avoid any re-zoning which tends to perpetuate segregated pupil assignment. The Board is free to consider all known ways of desegregation, including bussing (the economics of which might pleasantly surprise the taxpayers); pairing of grades or of schools; enlargement and re-alignment of existing zones; freedom of transfer coupled with free transportation for those who elect to abandon *de facto* segregated schools; and any other methods calculated to establish education as a public program operated according to its own independent standards, and unhampered and uncontrolled by the race of the faculty or pupils or the temporary housing patterns of the community.

THE LAW WHICH GOVERNS

This case vitally affects 83,000 school children of Charlotte and Mecklenburg County—and their families. That means virtually all of us. The School Board and this court are bound by the Constitution as the Supreme Court interprets it. In order that we think in terms of law and human rights instead of in terms of personal likes and preferences, we ought to read about what the Supreme Court has said.

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Before 1954, public education in North Carolina was segregated by law. "Separate but equal" education was acceptable. This *de jure* segregation was outlawed by the two decisions of the Supreme Court in *Brown v. Board of Education*, 347 U. S. 483 (1954) and 349 U. S. 294 (1955).

The first *Brown* opinion held that racial segregation of schools by law was unconstitutional because racial segregation, even though the physical facilities and other tangible factors might be equal, deprives Negro children of equal educational opportunities. The Court recalled prior decisions that segregation of graduate students was unlawful because it restricted the student's "ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." The Court said:

"Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

Quoting a lower court opinion, the Supreme Court continued:

"Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard]

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the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.'

"We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. . . ."

The second *Brown* case, decided May 31, 1955, directed school boards to do whatever was necessary to carry out the Court's directive as to the pending cases "with all deliberate speed" (349 U. S. 301).

North Carolina's most significant early response to *Brown* was the Pupil Assignment Act of 1955-56,¹ under which local school boards have the sole power to assign pupils to schools, and children are required to attend the schools to which they are assigned.

It is still to this day the local School Board, and not the court, which has the duty to assign pupils and operate the schools, subject to the requirements of the Constitution.

¹ N.C.G.S., § 115-176. Authority to provide for assignment and enrollment of pupils; rules and regulations.—Each county and city board of education is hereby authorized and directed to provide for the assignment to a public school of each child residing within the administrative unit who is qualified under the laws of this State for admission to a public school. Except as otherwise provided in this article, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final. . . . No child shall be enrolled in or permitted to attend any public school other than the public school to which the child has been assigned by the appropriate board of education. In exercising the authority conferred by this section, each county and city board of education shall make assignments of pupils to public schools so as to provide for the orderly and efficient administration of the public schools, and provide for the effective instruction, health, safety, and general welfare of the pupils. Each board of education may adopt such reasonable rules and regulations as in the opinion of the board are necessary in the administration of this article. (Emphasis added.)

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It is the court's duty to assess any pupil assignment plan in term of the Constitution, which is still the Supreme law of the land.

Some token desegregation of Charlotte city schools occurred during the late 1950's. In 1961, upon economic and administrative grounds not connected with questions of segregation, the Charlotte City schools and the Mecklenburg County schools were consolidated into one school administrative unit under one nine-member board known as the Charlotte-Mecklenburg Board of Education. By 1964 a few dozen out of more than 20,000 Negro school children were attending schools with white pupils.

This suit was filed on January 19, 1965, by Negro patrons, to seek orders expediting desegregation of the schools. At that time, serious questions existed whether *Brown* required any positive action by school boards to eliminate segregated schools or whether it simply forbade active discrimination. An order was entered in 1965 by the then District Judge in line with the law as then understood, substantially approving the Board's plan for desegregation. The Fourth Circuit Court of Appeals affirmed the order.

Pursuant to the approved plan the Board closed certain all-Negro schools, established school zones, built some new schools, and set up a freedom of choice arrangement for the entire system. The students in a zone surrounding each school are assigned to that school: a period is allotted each spring to request assignment to another school: no reason for transfer need be given; all transfer requests are honored unless the requested schools are full; no transportation is available to implement such transfer.

In appraising the results under this plan in 1969, four years later, we must be guided by some other and more recent things the Supreme Court has said.

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In *Green v. New Kent County School Board*, 391 U. S. 430 at 435 (1968), the Supreme Court held unlawful a county school pupil assignment system which maintained a black school and a white school for the same grades. The Court said:

"It was such dual systems that 14 years ago *Brown I* held unconstitutional and a year later *Brown II* held must be abolished; school boards operating such school systems were required by *Brown II* 'to effectuate a transition to a racially nondiscriminatory school system.' 349 U. S., at 301. It is of course true that for the time immediately after *Brown II* the concern was with making an initial break in a long-established pattern of excluding Negro children from schools attended by white children. The principal focus was on obtaining for those Negro children courageous enough to break with tradition a place in the 'white' schools. See, e. g., *Cooper v. Aaron*, 358 U. S. 1. Under *Brown II* that immediate goal was only the first step, however. *The transition to a unitary, nonracial system of public education was and is the ultimate end to be brought about; . . .*"

* * * * *

"It is against this background that 13 years after *Brown II* commanded the abolition of dual systems we must measure the effectiveness of respondent School Board's 'freedom-of-choice' plan to achieve that end.

* * * * *

" . . . In the light of the command of that case, what is involved here is the question whether the Board has achieved the 'racially nondiscriminatory school system' *Brown II* held must be effectuated in order

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to remedy the established unconstitutional deficiencies of its segregated system. In the context of the state-imposed segregated pattern of long standing, the fact that in 1965 the Board opened the doors of the former 'white' school to Negro children and of the 'Negro' school to white children merely begins, not ends, our inquiry whether the Board has taken steps adequate to abolish its dual, segregated system. *Brown II* was a call for the dismantling of well-entrenched dual systems tempered by an awareness that complex and multifaceted problems would arise which would require time and flexibility for a successful resolution. School boards such as the respondent then operating state-compelled dual systems were nevertheless clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch. . . ."

" . . . 'The time for mere "deliberate speed" has run out,' *Griffin v. County School Board*, 377 U. S. 218, 234; 'the context in which we must interpret and apply this language [of *Brown II*] to plans for desegregation has been significantly altered.'"

" . . . The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now.

"The obligation of the district courts, as it always has been, is to assess the effectiveness of a proposed plan in achieving desegregation. . . ."

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"We do not hold that 'freedom of choice' can have no place in such a plan. We do not hold that a 'freedom-of-choice' plan might of itself be unconstitutional, although that argument has been urged upon us. Rather, all we decide today is that *in desegregating a dual system a plan utilizing 'freedom of choice' is not an end in itself*. As Judge Sobeloff has put it,

"'Freedom of choice' is not a sacred talisman; it is only a means to a constitutionally required end—the abolition of the system of segregation and its effects. If the means prove effective, it is acceptable, but if it fails to undo segregation, other means must be used to achieve this end. The school officials have the continuing duty to take whatever action may be necessary to create a 'unitary, nonracial system.'"*Bowman v. County School Board*, 382 F. 2d 326, 333 (C. A. 4th Cir. 1967) (concurring opinion).

"... Although the general experience under 'freedom of choice' to date has been such as to indicate its ineffectiveness as a tool of desegregation, there may well be instances in which it can serve as an effective device. Where it offers real promise of aiding a desegregation program to effectuate conversion of a state-imposed dual system to a unitary, nonracial system there might be no objection to allowing such a device to prove itself in operation. On the other hand, if there are reasonably available other ways, such for illustration as zoning, promising speedier and more effective conversion to a unitary, nonracial school system, 'freedom of choice' must be held unacceptable."

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"... The Board must be required to formulate a new plan and, in light of other courses which appear open to the Board, such as zoning, fashion steps which promise realistically to convert promptly to a system without a 'white' school and a 'Negro' school, but just schools."

(All emphasis added except for the word "required" in the first quoted paragraph and the word "now" in the fifth quoted paragraph.)

It is obvious that between 1955 and 1968 the meaning and the force of the constitutional guaranty that education if tax paid be equal for all has been intensified. The duty now appears as not simply a negative duty to refrain from active legal racial discrimination, but a duty to act positively to fashion affirmatively a school system as free as possible from the lasting effects of such historical *apartheid*. It is in this light that the actions of school boards must now be studied.

FINDINGS OF FACT**SOME FACTS ABOUT THE CHARLOTTE-MECKLENBURG
SCHOOL SYSTEM:**

a) *General Information.*—The system covers 550 square miles and serves more than 82,000 pupils. It is 43rd in size among the school administrative units of the United States. The county population is over 335,000. The population of Charlotte is now about 270,000. The student population increases at a rate between 2,500 and 3,000 students per year. The schools are 107 in number, including 76 elementary schools (grades 1 through 6), 20 junior high

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schools (grades 7 through 9) and 11 senior high schools (grades 10 through 12). The Board also operates a learning academy, 4 child development centers (kindergartens for the underprivileged) and 3 psycho-educational clinics.

The students on the rolls as of January 1969 include 44,835 elementary students, 20,675 junior high students and 16,690 senior high students. Of these students, about 29% are Negro and about 71% are white. The ratio of black to white of all ages in the county is about one to three.

The 5,880 school employees include 3,553 classroom teachers; 404 other members of the instructional staff including principals, directors and special staff members. These include 60 guidance counselors and 114 librarians. Other employees include 325 secretaries and other clerical employees, 995 cafeteria employees, 357 janitors and maids, 219 maintenance and transportation workers and 27 people assigned to educational television work. The school system is the largest employer in the state's most populous county.

The nine members of the Board of Education are elected three every two years on a non-partisan basis for six-year terms.

Over 18% of the 3,553 classroom teachers have graduate certificates. Some 2,870 or nearly 81% have Class A certificates. Some 852 teachers are men.

Of 1968's 4,095 high school graduates, about 62% or 2,539 entered college. The drop-out rate for the past two years has been approximately 2.3% of the total enrollment of the schools.

The operating budget for the system (not counting construction costs) was nearly \$40,000,000 last year. Average per pupil expense was over \$530. Teachers' salaries range

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from \$5,669 to \$10,230.25. School funds come 58% from the state, 35% from local sources, and 7% from federal funds.

Class size averages approximately 28 students in elementary schools (the first six grades); 26.4 in junior high schools and 29.3 in senior high schools.

All schools have libraries. The total number of books in the libraries is over 806,000, which is nearly 10 books per pupil, with a value estimated at \$2,677,804. (This may be compared with the average of roughly one-half a book per pupil in the schools of the District of Columbia a couple of years ago.) These are not the textbooks which are furnished free by the state for individual use, but are library books for general circulation. Circulation last year was 2,884,252, or an average per pupil of 36 books.

The Board operates the largest food service industry in the state, serving over 70,000 meals a day on a budget of four and one-half million dollars.

Nearly one-fourth of the students (almost 20,000 last year) attend classes at the planetarium in the Children's Nature Museum. This is reportedly more children than attend regular classes at any other planetarium in the country.

Special consultants and teachers are provided in special areas such as art, music, languages, social studies, science, mathematics and physical education. Special teachers are employed to teach classes for the gifted, the mentally retarded and the physically handicapped. Guidance counselors, school psychologists and social workers are available where needed.

Faculty salaries are higher in Mecklenburg County than in most other counties of the state, by virtue of a substantial salary supplement from local taxpayers.

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b) *History and Geography; Background of De Facto Segregation.*—Charlotte (270,000-plus) sits in the center of Mecklenburg County (550 square miles, total population over 335,000). The central city may be likened to an automobile hub cap, the perimeter area to a wheel, and the county area to the rubber tire. Tryon Street and the Southern Railroad run generally through the county and the city from northeast to southwest. Trade Street runs generally northwest to southeast and crosses Tryon Street at the center of town at Independence Square. Charlotte originally grew along the Southern railroad tracks. Textile mills with mill villages, once almost entirely white, were built. Business and other industry followed the highways and the railroad. The railroad and parallel highways and business and industrial development formed something of a barrier between east and west.

By the end of World War II many Negro families lived in the center of Charlotte just east of Independence Square in what is known as the First Ward—Second Ward—Cherry—Brooklyn area. However, the bulk of Charlotte's black population lived west of the railroad and Tryon Street, and north of Trade Street, in the northwest part of town. The high priced, almost exclusively white, country was east of Tryon Street and south of Trade in the Myers Park—Providence—Sharon—Eastover areas. Charlotte thus had a very high degree of segregation of housing before the first *Brown* decision.

Among the forces which brought about these concentrations should be listed the original location of industry along and to the west of the Southern railroad; the location of Johnson C. Smith University two miles west of Tryon Street; the choice of builders in the early 1900's to go south and east instead of west for high priced dwelling construction; the effect of private action and public law on choice of dwelling sites by black and by white pur-

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chasers or renters; real estate zoning which began in 1947; and the economics of the situation which are that Negroes have earned less money and have been less able to buy or rent expensive living quarters.

Local zoning ordinances starting in 1947 generally allow more varied uses in the west than in the east. Few if any areas identified as black have a residential restriction stronger than R-6, which means that a house can be built on a lot as small as 6,000 square feet. Zoning restrictions in other areas go as high as 12,000 and 15,000 square feet per lot. Nearly all industrial land in the city is in the west. The airport in the southwest with its jet air traffic inhibits residential development. Many black citizens live in areas zoned industrial, which means that the zoning law places no restriction on the use of the land. The zoning laws follow the pattern of low cost housing and industry to the west and high cost housing with some business and office developments to the east.

City planning has followed the same pattern.

Tryon Street and the Southern railroad were not built to segregate races. In the last fifteen years grade crossings have been eliminated at great expense at Fourth Street, Trade Street, Twelfth Street and Independence Boulevard; and an elevated half-mile bridge, the Brodie Griffith Skyway, is now being built across the railroad in North Charlotte at a cost of more than three million dollars. The ramparts are being pierced in many spots and inner-city highways now under construction will make communication much simpler.

However, concentration of Negroes in the northwest continues. Under the urban renewal program thousands of Negroes were moved out of their shotgun houses in the center of town and have relocated in the low rent areas to the west. This relocation of course involved many ad-

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hoc decisions by individuals and by city, county, state and federal governments. Federal agencies (which hold the strings to large federal purses) reportedly disclaim any responsibility for the direction of the migration; they reportedly say that the selection of urban renewal sites and the relocation of displaced persons are matters of decision ("freedom of choice"!) by local individuals and governments. This may be correct; the clear fact however is that the displacement occurred with heavy federal financing and with active participation by local governments, and it has further concentrated Negroes until 95% or so of the city's Negroes live west of the Tryon—railroad area, or on its immediate eastern fringes.

Onto this migration the 1965 school zone plan with freedom of transfer was superimposed. The Board accurately predicted that black pupils would be moved out of their midtown shotgun housing and that white residents would continue to move generally south and east. Schools were built to meet both groups. Black or nearly black schools resulted in the northwest and white or nearly all white schools resulted in the east and southeast. Freedom of students of both races to transfer freely to schools of their own choices has resulted in resegregation of some schools which were temporarily desegregated. The effect of closing the black inner-city schools and allowing free choices has in overall result tended to perpetuate and promote segregation.

SOME BOARD ACTIONS FOUND NOT TO BE DISCRIMINATORY

No racial discrimination or inequality is found in the following disputed matters:

1. *The use of federal funds for special aid to the disadvantaged.* The testimony and the exhibits failed to show

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that federal money was used with any discrimination by race or with any improper displacement of local money.

2. *Use of mobile classrooms.* In recent years the system has required the addition of nearly two classrooms per week. Mobile classrooms have been used to provide extra space temporarily to cope with shifts and growth in school population. Mobiles are not inferior in quality and comfort to permanent classrooms, and recent models are superior in many ways to many existing permanent classrooms. Their use and location are matters to be determined by the Board in light of the court's instructions hereafter on the preparation of a new plan for pupil assignment.

3. *The quality of the school buildings and equipment.* The evidence showed the per pupil value of the land and buildings and equipment of the various schools. Average value of these items per pupil for elementary schools was \$861; for junior high schools \$1,229; and for senior high schools \$1,567. Schools described by witnesses as "white" ranged well up and down on both sides of that average figure and schools described by witnesses as "black" showed a similar variation. Several of the oldest and most respected "white" elementary schools in the county (Sharon Road and Steele Creek, for example) have very low per pupil facilities values. One of the newest but still all black high schools (West Charlotte) has one of the highest per pupil facilities values. The highest priced school (Olympic High) is totally desegregated (522 white and 259 black students). No racial discrimination in spending money or providing facilities appears.

4. *Coaching of athletics.* Coaches at the predominantly black schools are usually black. Coaches at the predomi-

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antly white schools are usually white. Several black coaches have been employed at "white" schools. No black coach was shown to have applied and been refused a job. No pattern of discrimination appears in the coaching ranks.

5. *Parent-Teacher Association contributions and activities.* Parents contribute to school projects through voluntary Parent-Teacher Associations. This voluntary parental action is not racial discrimination against children whose parents are less able to make such contributions, and it does not come about through state action.

6. *School fees.* It was contended that the school fee system is discriminatory. For example, at the elementary level, grades 1 through 6, each student is supposed to bring a dollar to school at the beginning of the year to provide some extra learning aids in the form of paper, art materials and the like. In poor communities collection of this fee averages only about 50%, whereas nearly all wealthy children pay all the fees assessed in their schools. This non-payment of school fees by the poor is not a racial discrimination against the poor. The schools where people are poorer have other funds by which this 50¢ per pupil can be made up.

7. *School lunches.* School lunches are provided free to needy students. The court finds that no one has ever knowingly been denied a free lunch on racial grounds if he could not pay for it.

8. *Library books.* Library books of comparable quality and content are available to all students, black and white, in all schools in an average number of nearly ten per pupil.

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9. *Elective courses.* Some elective courses such as German are offered at some but not all of the high schools. They are offered at a school only if enough students express a desire for the course. Not all schools therefore have all elective courses every year. This situation is not the result of discrimination on account of race.

10. *Individual Evaluation of Students.* Individual students are evaluated annually in terms of achievement in particular subjects, and divided into groups for the study of particular subjects in accordance with their achievement. (This is not, truly described, the "track" system which was elaborately criticized by Judge Skelly Wright in his 119-page opinion in *Hobson v. Hansen*, 239 F. Supp. 401 (D.C. D.C., 1967).) Few black students are in the advanced sections and most are in regular or slow sections. Assignments to sections are made by the various schools based not on race but on the achievement of the individual students in a particular subject. There is no legal reason why fast learners in a particular subject should not be allowed to move ahead and avoid boredom while slow learners are brought along at their own pace to avoid frustration. It is an educational rather than a legal matter to say whether this is done with the students all in one classroom or separated into groups.

11. *Gerrymandering.* Gerrymandering was contended in the 1965 hearing of this case. Perhaps the evidence comes closer to proving it this time. The court is not by this order foreclosing the later assertion of that contention or for that matter any other contention which may be advanced, because it is the court's duty to keep the matter under advisement. However, in view of the court's orders herein which are expected to produce substantial changes in the

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pupil assignment system and a reappraisal of all zoning considerations, it is believed that nothing in particular need be said here about specific school district lines.

SOME COMMENT ON SPECIFIC ISSUES

a) *The Present State of Desegregation.*—Defendant's Exhibit Seven (attached as an appendix to this opinion) shows pupil and faculty population for each school in the system, by races, in March of 1965 and in October of 1968. From this and other evidence the following facts are apparent:

1) *The Rural Schools Are Largely Desegregated.* Of the 32,000 rural children of all twelve grades, some 23,000, black and white, are being hauled by bus to desegregated schools. No rural schools are all-black. The only all-white county schools are four new schools in the south and east portions of the county: Beverly Woods, Devonshire, Idlewild and Lansdowne.

2) *The City Schools are Still Largely Segregated.* A few city schools, Elizabeth (58% Negro); Highland (13% Negro); Plaza Road (19% Negro); Randolph (28% Negro); Sedgefield (19% Negro); Spaugh (18% Negro) and Harding (17% Negro) have a substantial degree of apparently stabilized desegregation. However, most of the fully desegregated city schools are not stable in that situation, but are rapidly moving (through a temporary desegregation) from an all-white to an all-black condition. Dramatic examples are Barringer (84% Negro); Villa Heights (86% Negro); Piedmont (89% Negro); Tryon Hills (50% Negro); Hawthorne Junior High (52% Negro); Lakeview (65% Negro); and apparently Dilworth (39% Negro) and Wilmore (33% Negro).

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3) *More Than Three-Fourths of the Children Attend Schools Which Have One or More Children of the Opposite Race.* In Cornelius (49% Negro), Dilworth (39% Negro), Eliabeth (58% Negro) and a few others, the races are close to being balanced in numbers. However, most schools have only a small handful of the minority race. Illustrations are: Second Ward High School (1,139 black and three white); Midwood (522 white, one black); Lincoln Heights (817 black, two white).

4) *Most Black Students Attend Totally or Almost Totally Segregated Schools.* Out of 24,000 black students:

- 4,780 attend nine all-black elementary schools;
- 3,380 attend six elementary schools which are more than 99% black;
- 2,491 attend three all-black junior high schools;
- 727 attend York Road with only six white fellow junior high students;
- 1,569 high school students attend all-black West Charlotte; and
- 1,139 black Second Ward High School students have only three white classmates.

14,086

In other words, of the 24,000 or so black students, 14,086 of them attend school daily in schools that are all-black unless at York Road they see one of the six white students or at Second Ward they see one of the three white students, who were enrolled there last October.

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5) *Most White Students Attend Largely or Completely Segregated Schools.* Thirteen elementary schools with 8,044 pupils are 100% white; eighteen other elementary schools with a pupil enrollment of 10,651 have only 150 black students. The total number of white elementary students is only 31,545. At the junior high level, 7,641 out of 14,741 white students attend school with only 193 black students in six schools. In the high schools, 12,310 white students attend school with 1,642 blacks, while 2,735 black students at West Charlotte and Second Ward attend school with three white students.

b) *The Opinions of Experts.*—Doctors Larson, Finger and Passy, all from Rhode Island College, of Providence, Rhode Island, testified at length. They submitted a 55-page report which outlines several possible plans for realignment of school zones and for provision of transportation; for pairing schools; for setting up feeder systems; for educational parks; and other approaches towards desegregation. None was as familiar with the local situation as the local Board and school administrators. All drew certain conclusions from the Coleman Report, which is a collection of statistics on performance of school children in certain areas about the country. Some said that kindergarten for all children would help the situation. Some said underprivileged children should start getting public education several years before first grade age. Some said that improving the faculty was important. Available statistics and expert opinion agreed that Negro students as a group do noticeably worse on achievement tests than students generally. The experts agreed that if children are underprivileged and undercultured, their school performance will be generally low. One expert, Dr. Passy, said that socio-

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economic-cultural background is the sole major determinant of school performance. The Abraham Lincoln-Charles Kettering theory of the rise of Americans from poor backgrounds received small support.

One point on which the experts all agree (and the statistics tend to bear them out) is that a racial mix in which black students heavily predominate tends to retard the progress of the whole group, whereas if students are mingled with a clear white majority, such as a 70/30 ratio (approximately the ratio of white to black students in Mecklenburg County), the better students can hold their pace, with substantial improvement for the poorer students.

c) *The "Neighborhood School" Theory.*—Recently, the School Board has followed what it calls the "neighborhood school" theory. Efforts have been made to locate elementary schools in neighborhoods, within walking distance of children. The theory has been cited to account for location and population of junior and senior high schools also.

"Neighborhood" in Charlotte tends to be a group of homes generally similar in race and income. Location of schools in Chalotte has followed the local pattern of residential development, including its *de facto* patterns of segregation. With a few significant exceptions, such as Olympic High School (about $\frac{1}{3}$ black) and Randolph Road Junior High School (28% black), the schools which have been built recently have been black or almost completely black, or white or almost completely white, and this probability was apparent and predictable when the schools were built. Specific instances include Albemarle Road Elementary (99%+ white); Beverly Woods (100% white); Bruns Avenue (99%+ black); Hidden Valley (100% white); Olde Providence (98% white); Westerly Hills (100+ white); Albemarle Road Junior High (93% white).

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Today people drive as much as forty or fifty miles to work; five or ten miles to church; several hours to football games; all over the county for civic affairs of various types. The automobile has exploded the old-fashioned neighborhood. Parents with children of all ages may be members of two or three separate and widely scattered school "communities." *Putting a school in a particular location is the active force which creates a temporary community of interest among those who at the moment have children in that school.* The parents' community with the school ordinarily ends the day the youngest child graduates.

If this court were writing the philosophy of education, he would suggest that educators should concentrate on planning schools as educational institutions rather than as neighborhood proprietorships. The neighborhood school concept may well be invalid for school administrative purposes even without regard for racial problems. The Charlotte-Mecklenburg School Board today, for example, is transporting 23,000 students on school buses. First graders may be the largest group so transported. If a first grader lives far enough from school to ride a bus, the school is not part of his neighborhood.

When racial segregation was required by law, nobody evoked the neighborhood school theory to permit black children to attend white schools close to where they lived. The values of the theory somehow were not recognized before 1965. It was repudiated by the 1955 North Carolina General Assembly and still stands repudiated in the Pupil Assignment Act of 1955-56, which is quoted above. The neighborhood school theory has no standing to override the Constitution.

d) *Bussing.*—Under North Carolina General Statutes, §115-180, the Board is expressly authorized to operate

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school busses to transport school children. The state pays bus expenses only for rural children and for some who have been annexed into the city in recent years. This apparent discrimination against city dwellers is reportedly under attack in another court. This Board already transports 23,000 students to school every day out of the 32,000 who live in the area presently eligible for bus service. The present cost of school bussing is about \$19 for bus operation plus the cost of the bus which at \$4,500 per bus should not exceed \$20 per pupil a year. In other words, it costs about \$40 a year per pupil to provide school bus transportation, out of total per pupil school operating costs of about \$540. The income of many black families is so low they are not able to pay for the cost of transportation out of segregated schools to other schools of their choice.

The Board has the power to use school buses for all legitimate school purposes. Buses for many years were used to operate segregated schools. There is no reason except emotion (and I confess to having felt my own share of emotion on this subject in all the years before I studied the facts) why school busses cannot be used by the Board to provide the flexibility and economy necessary to desegregate the schools. Busses are cheaper than new buildings; using them might even keep property taxes down.

e) *Faculty Desegregation.*—The Board employs over 2,600 white teachers and over 900 black teachers. New teachers hired last year numbered 700. Technically their contracts are with the Board of Education to teach where assigned. The Board makes no sustained effort to desegregate faculties. The choice where to teach is a matter between the principal and the prospective teacher. The Board assumes white teachers will tend to choose white schools and black teachers black schools.

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The results of this passive selection policy are obvious. Of the thirteen all-black schools in the system serving 8,840 students, only four have any white teachers. Those four have ten white teachers and 161 black teachers for 3,662 students. Few predominantly black schools have any substantial number of white teachers, except a few schools which serve areas rapidly turning from white to black. Eight other schools 99% or more black had only six white teachers among them for 5,246 black and 24 white pupils. Second Ward and West Charlotte High Schools, with 2,700 black students and three white students, have 131 black teachers and only nine white teachers.

All of the white elementary schools have at least one and in a few cases as many as three or four black teachers. The proportions of black teachers in the junior and senior high schools run slightly higher. The system has not operated, however, to produce any substantial teaching of black students by white teachers.

Desegregation of faculties does not depend upon proof of superiority of one group of teachers or students over the other. Whatever the discrimination that may result from a segregated faculty, it will be eliminated only when a child attending any school in the system will face about the same chances of having a black or a white teacher as he would in any other school. Mecklenburg schools pay a sizeable salary supplement. Desegregation is proceeding in other counties and school districts. It can not be assumed and should not be a tacit part of Board policy that white school teachers are opposed to equality of education or that they will refuse to teach in black schools. In fact, white and black teachers are working together in substantial numbers in several schools of this system and there was no evidence at the hearing of any friction or

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difficulty caused by a bi-racial faculty. It is from the teachers that children learn their first glimmerings of the right to equality of opportunity which still constitutes America's chief contribution to modern civilization. The right of all children to equal education is part of that right. It is believed that if the Board takes a stand that requires faculty desegregation and treats all teachers equally in working towards that end, the teachers will participate wholeheartedly.

f) *Metropolitan High School.*—Supported by impressive recommendations from Engelhart, Engelhart & Leggett, educational consultants, the Board has planned and has two million dollars on hand to build Metropolitan High School at or near the location of present Second Ward High School. In addition to being a school for conventional high school work, it is to be a center for vocational training and special courses in music, the creative and performing arts and other special subjects not practical to offer in all the high schools. Second Ward is now a 99%+ black school in the Brooklyn urban renewal area four or five blocks south of the Court House and City Hall. The First Baptist Church and the School Board itself have buildings under way on adjacent or nearby land. This is near the geographical and traffic center of the city and county, one-half a mile from the central business district, a few blocks from Central Piedmont Community College and within easy travel distance of most of the city. The location and proposed purposes appear ideal.

Plaintiffs' attorneys object to Metropolitan High School. Some present school patrons want the school built. The School Board has announced a stoppage of work on that school pending this decision.

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All three groups may be proceeding upon an erroneous assumption—that the school if built will be a black school because the pupil and faculty populations will be governed by freedom of transfer and school zones as presently administered. That assumption should no longer be entertained. Pupils for regular and vocational subjects can travel or be transported to and from this area, in all directions, with greater ease than is true of any other location in the county. The nearest other high schools, Harding, West Charlotte, Garinger, East and Myers Park, form a hollow pentagon six or seven miles on the side surrounding Second Ward. It would be tragic to refrain from building a needed educational facility simply upon the assumption that it has to be an all-black school and therefore either unlawful or unattractive. The School Board is advised to make plans for desegregation of this school along with other schools in the system. With the unrestricted statutory power to assign pupils and provide transportation, the only thing necessary to build Metropolitan High School according to the dreams of its planners is the decision to do so.

g) *The Percentage Racial Mix.*—Counsel for the plaintiffs says that since the ratio of white to black students is about 70/30, the School Board should assign the children on a basis 70% white and 30% black, and bus them to all the schools. This court does not feel that it has the power to make such a specific order. Nevertheless, the Board does have the power to establish a formula and provide transportation; and if this could be done, it would be a great benefit to the community. It would tend to eliminate shopping around for schools; all the schools, in the *New Kent County* language, would be "just schools"; it would make all schools equally "desirable" or "undesirable" de-

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pending on the point of view; it would equalize the benefits and burdens of desegregation over the whole county instead of leaving them resting largely upon the people of the northern, western and southwestern parts of the county; it would get the Board out of the business of law-suits and real estate zoning and leave it in the education business; and it would be a tremendous step toward the stability of real estate values in the community and the progress of education of children. Though seemingly radical in nature, if viewed by people who live in totally segregated neighborhoods, it may like surgery be the most conservative solution to the whole problem and the one most likely to produce good education for all at minimum cost. It would simply put the all-white and all-black school people in the same school situation now being experienced by patrons of Cornelius, Davidson, Ranson, Long Creek, Dilworth, Olympic, Huntersville, Pineville, Randolph Road Junior High, Statesville Road, and similar schools. Such action would be supported by the unanimous testimony of all the experts and by inferences from the Coleman Report that although mixing a few whites and a heavy majority of blacks retards the whole group, nevertheless mixing a *substantial majority of whites* and a few blacks helps the blacks to advance without retarding the whites.

h) *A Word About the School Board.*—The observations in this opinion are not intended to reflect upon the motives or the judgment of the School Board members. They have operated for four years under a court order which reflected the general understanding of 1965 about the law regarding desegregation. They have achieved a degree and volume of desegregation of schools apparently unsurpassed in these parts, and have exceeded the performance of any school board whose actions have been re-

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viewed in appellate court decisions. The Charlotte-Mecklenburg schools in many respects are models for others. They are attractive to outside teachers and offer good education. The problem before this court is only one part (albeit a major part) of the educational problem. The purpose of this court is not to criticize the School Board, but to lay down some legal standards by which the Board can deal further with a most complex and difficult problem. The difference between 1965 and 1969 is simply the difference between *Brown* of 1955 and *Green v. New Kent County* of 1968. The rules of the game have changed, and the methods and philosophies which in good faith the Board has followed are no longer adequate to complete the job which the courts now say must be done "now."

CONCLUSIONS OF LAW

1. Since 1965, the law has moved from an attitude barring discrimination to an attitude requiring active desegregation. The actions of school Boards and district courts must now be judged under *Green v. New Kent County* rather than under the milder lash of *Brown v. Board of Education*. The court has outlined changes which should be made in the activity and theory of the local Board.

2. The manner in which the Board has located schools and operated the pupil assignment system has continued and in some situations accentuated patterns of racial segregation in housing, school attendance and community development. The Board did not originate those patterns; however, now is the time to stop acquiescing in those patterns.

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3. Freedom of transfer as operated in this system does not answer the problems of racial segregation. The evidence shows that the black students as a group have very low incomes. Freedom of transfer without transportation is to such a student often an empty right.
4. The faculties have not been adequately desegregated as directed. This permits and promotes inequality of education.
5. The court does not find any inequality based upon racial motives or reasons in the use of federal funds; the use of mobile classrooms; quality of school buildings and facilities; athletics; PTA activities; school fees; free lunches; books; elective courses; nor in individual evaluation of students. The problem of alleged gerrymandering of district lines need not be covered separately from the general order herein made.
6. There has been substantial desegregation in many areas—mostly the rural areas—of this large and complicated school system. A majority of the black students, however, still attend segregated schools and seldom, if ever, see a white fellow student. Many all-black and all-white schools still remain. The neighborhood school concept and freedom of choice as administered are not furthering desegregation.
7. The School Board has an affirmative duty to promote faculty desegregation and desegregation of pupils, and to deal with the problem of the all-black schools.
8. The School Board is free and encouraged to use school busses or other public transportation and to use

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mobile classrooms as needed to provide equality of educational opportunity.

9. The Board has assets and experience beyond the reach of a judge to deal with all these problems, and should be requested to formulate a plan and time table of positive action.

ORDER

1. All findings or statements of fact in this opinion and order shall be deemed conclusions of law, and all conclusions of law shall be deemed to be findings of fact as necessary in support and furtherance of this order. All competent and relevant evidence in the record has been considered in support of this order.

2. The defendant is directed to submit by May 15, 1969, a plan for the active and complete desegregation of teachers in the Charlotte-Mecklenburg school system, to be effective with the 1969-70 school year. Such plan could approach substantial equality of teaching in all schools by seeking to apportion teachers to each school on substantially the same ratio (about three to one) as the ratio of white teachers and black teachers in the system at large. It is suggested that teachers' preferences not be especially sought and that teachers be assigned as a routine matter for the purpose of accomplishing this equalization of the application of educational manpower and womanpower in the public schools. Such a plan should provide safeguards against racial discrimination in the discharge of any teachers whose jobs might be changed or abolished. Such safeguards should include provisions that if anyone has to be discharged, his qualifications will be weighed against

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those of all personnel in the system rather than simply against those in the capacity in which he has been working; no teacher should be dismissed or demoted or denied employment or promotion because of race or color. In other words, the Board will be expected to see to it that teachers displaced by virtue of this order will not be discriminated against on account of race.

3. The defendant is directed to submit by May 15, 1969, a plan and a time table for the active desegregation of the pupils, to be predominantly effective in the fall of 1969 and to be completed by the fall of 1970. Freedom of choice and zoning may be used in such a plan provided they promote rather than defeat desegregation. If freedom of choice is retained in such plan, it should include provision for transportation free for any student who requests transfer out of a school where his race is in the majority, and to any school where his race is in the minority, and a means of insuring that all students have full and timely knowledge of the availability of such transportation.

4. In formulating its plan the Board is, of course, free to use all of its own resources and any or all of the numerous methods which have been advanced, including pairing of grades and of schools; feeding elementary into junior high and into senior high; combinations of zone and free choice where each method proceeds logically towards eliminating segregation; and bussing or other transportation. The Board may also consider setting up larger consolidated school units freely crossing city-county lines to serve larger areas. There is no magic in existing school zone lines nor in the present size of any school. The Board is encouraged to get such aid as may be available from state and federal agencies including the offices

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of the Department of Health, Education and Welfare. The court does not direct a treaty with the Department, but does suggest that since its employees are in the business of dealing with these problems, they have a store of technical assets and manpower and information which could be useful in the Board's making any particular judgment or analysis.

5. The plan should be the plan of the Board for the effective operation of the schools in a desegregated atmosphere, removed to the greatest extent possible from entanglement with emotions, neighborhood problems, real estate values and pride. The court's task has not been easy, but it is fully realized that the task facing the Board is far more difficult and will require a conspicuous degree of further public service by the Board's members.

This the 23rd day of April, 1969.

/s/ JAMES B. McMILLAN
James B. McMillan
United States District Judge

APPENDIX

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The Charlotte-Mecklenburg Schools

Research Report 2-'69

SUMMATION OF DEGREE OF INTEGRATION 1965 (MARCH) AND 1968-69 (OCT. 1,

For Pupils

Professional Staff

Schools Having Integration

For Pupils	1965		1968		For Staff	1965		1968	
	N	W	N	W		N	W	N	W
	1 N + 22 W = 23 of 109 or 21%		16 N + 68 W = 84 of 112 or 75%			3 N + 0 W = 3 of 109 or 3%		16 N + 82 W = 98 of 112 or 87½%	

Pupils	1965		1968		Number in Minority Race (integrated)	1965		1968	
	N	W	N	W		N	W	N	W
Pupils	9N	476W	1192N	6704W	527W	0N	131W	208N	

Pupils	1965		1968		Number in Majority Race (integrated)	1965		1968	
	N	W	N	W		N	W	N	W
Pupils	343N	16,446W	8697N	47,356W	143,3N	+0W	374N	2575W	

Total Involved by
Integration

Predominantly <u>Negro Schools</u>	1965		1968		Staff	1965		1968	
	N	W	N	W		N	W	N	W
-- Pupils	9889				149			505	
Predominantly <u>White Schools</u>									
-- Pupils	16,922		54,060		Staff		0		2783
Total									
-- Pupils	17,274 or 24% of 72,336 Enrolled		63,949 or 77% of 83,111		Staff	149 or 5% of 3140 incl. part assignments in schools		3288 or 91% of 3613 assigned at one definite school	

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The Charlotte-Mecklenburg Schools

RACIAL DISTRIBUTION OF PUPILS AND PROFESSIONAL STAFF
1965 (March) and 1968-69 (Oct. 1, '68)

Grade	No. School	1965 Pupils		No. School	1968 Pupils		Professional Staff		
		N	W		N	W	N	W	I
1-6	72	9,364	27,696	76-	13,290	31,545	377+	1161½	478
7-9	17	2,475	11,804	21	5,934	14,741	111-	533	228
10-12	8	1,625	10,677	11	4,377	12,313	65	479½	178
	97	13,464	50,177	108-	23,601	58,599	553½	2184	884
Other	12	6,877	1,818	4+	28.7% 640	32.2% 271	323½	79	33
: Negro + Trainable									
1-4	1	360					15½		
1-7	2	431	207				17	9½	
1-9	3	729	1611				32	68	
5-9	1	505					25½		
1-12	3	2400					113½		
7-12	2	2452					120	1½	
Total	109	20,341	51,995	112	24,241	58,870	877	2263	907
		1 72,336T	+		1 83,111T	?			
		28.1%	71.9%		29.2%	70.8%			
							Include Part-time	Not In Part-time	
							Among teachers assigned more than one school		

APPENDIX

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COMPARISON OF PUPILS AND PROFESSIONAL STAFFING BY RACE
March 6, 1965 and 1968-69 *

School	1965 Pupils			1968-69 Pupils			Professional Staff						
	Elementary			1965			1968-69*						
	N	%	W	N	%	W (other)	N	%	W	N	%	W (other)	
Albemarle Rd.				4	1%	499				6	32%	13	
Alexander Street	342	100%		257	100%		14.1	100%		11	100%		
Allenbrook				50	10%	452				2	10%	18	
Ashley Park		0%	694		0%	553		0%	22.9	2	9%	20	
Bain		0%	674		25	3%	699		0%	28.2	1	3%	28
Barringer		0%	604		668	84%	131		0%	24.8	13	42%	18
Berryhill		0%	1026		119	15%	685		0%	39.6	2	6%	32
Bethune	343	97%	9		223	99%	3		17.6	100%	11	100%	
Beverly Woods					0%	286					1	8%	12
Biddleville	434	100%					17.2	100%					
Billingsville	729	100%		619	100%	2	32.1	100%		25	100%		
Briarwood	2	0%	582		8	1%	640		0%	23.9	3	12%	22
Bruns				740	99%	4				26	93%	2	
Chantilly		0%	445		2	0%	491		0%	18.8	1	5%	21
Clear Creek		0%	207		58	20%	225		0%	9.6	1	9%	12
Collinswood		0%	375		72	13%	490		0%	16.1	1	5%	21
Cornelius		0%	241		239	49%	252		0%	11.3	7	33%	14
Cotswold		0%	631		11	2%	567		0%	25.0	1	5%	21
Crestdale	97	100%					5.0	100%					
Davidson		0%	178		101	35%	186		0%	7.8	1	8%	11
Marie Davis	808	100%		705	100%		34.3	100%		29	100%		
Derita	6	1%	892		165	18%	728		0%	35.4	3	9%	32
Devonshire	2	0%	474			0%	889		0%	19.5	4	10%	37
Dilworth	100	20%	401		223	39%	355		0%	23.8	4	15%	22
Double Oaks	703	100%		800	100%		28.2	100%		32	100%		
Druid Hills	520	100%		504	99%	3	20.7	100%		20	100%		
Eastover		0%	704		49	3%	580		0%	27.1	1	4%	24
Elizabeth	5	1%	448		270	53%	194		0%	22.9	2	9%	21
Enderly Park		0%	368		2	1%	374		0%	14.9	1	6%	15
Fairview	702	100%		363	100%		28.0	100%		19	100%		

1-12	First Ward	473 100%	749 100%	22.8 100%	30 100%
1-13	J. H. Gunn	696 100%		33.6 100%	
	Hickory Grove	0% 530	80 13% 531	0% 21.7	1 1%
	Hidden Valley		0% 977		2 5%
	Highland	2 1% 273	47 13% 324	0% 14.0	1 1%

* Does not include staff assigned to more than one school per HEW request.

% N is nearest whole per cent that N is of total

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COMPARISON OF PUPILS AND PROFESSIONAL STAFFING BY RACE March 6, 1965 and 1968-69 *

School	1965 Pupils						1968-69 Pupils						Professional Staff					
	N			% N			N			% N			N			% N		
	Elementary	M	W	(other)	M	W	(other)	M	W	(other)	M	W	(other)	M	W	(other)	M	W
Hoskins		0%	342		18	6%	261			0%	14.7		2	1%				
Huntersville		0%	553		162	22%	560			0%	22.9		2	1%				
Huntingtowne Farms		0%	358		7	1%	695			0%	15.1		1	1%				
Idlewild		0%	592		2	0%	521			0%	23.9		1	1%				
1-4	Anay James	360	100%		477	100%	1			15.5	100%		19	100%				
1-7	Ada Jenkins	431	100%										17.0	100%				
1-8	Lakeview	0%	400		269	45%	147			0%	18.5		14	100%				
	Lansdowne	0%	633			0%	758			0%	23.9		1	33%				
	Lincoln Heights	783	100%		817	100%	2			29.1	100%		30	100%				
	Long Creek	0%	423		250	33%	466			0%	17.6		2	100%				
1-9	Matthews	0%	937		(1-6) 93	11%	742			0%	39.7		1	33%				
1-10	Merri Oaks	0%	538			0%	469			0%	21.9		1	51%				
	Midwood	0%	560			1	0%	522			0%	24.9		2	9%			
	Montclaire	0%	720			0%	722			0%	29.1		1	44%				
	Morgan	305	100%							14.9	100%							

321a

Hyers Park	0% 575	23	4% 543	0% 24.9	1	4% 23
Myers Street	820 100%			32.2 100%		
Nations Ford	0% 513	63	10% 585	0% 21.6	1	4% 25
Newell	0% 463	73	15% 423	0% 18.3	1	5% 18
Oakdale	0% 402	72	13% 480	0% 17.2	1	5% 21
Dakhurst	0% 548	2	0% 615	0% 22.8	1	4% 23
Oaklawn	666 100%	650	100%	26.0 100%	25	93% 2
Olde Providence		10	2% 34		1	6% 17
Park Road	0% 583		0% 551	0% 22.7	1	5% 21
Paw Creek	0% 793	63	7% 861	0% 30.3	1	3% 31
Pineville	0% 364	168	32% 363	0% 16.2	1	5% 21
Pinewood	0% 719		0% 707	0% 28.1	1	4% 26
Plaza Road	0% 400	99	19% 409	0% 17.7	1	5% 21
Rama Road	0% 442	2	0% 777	0% 18.7	2	7% 27
Sedgefield	3 1% 526	7	1% 545	0% 21.8	2	7% 20
Plato Price	505 100%			25.4 100%		
Selwyn	0% 531	5	1% 598	0% 21.9	1	4% 22
Seversville	96 30% 229			0% 14.8		
Shamrock Gardens	0% 536		0% 539	0% 21.9	1	5% 20
Sharon	0% 591		0% 519	0% 22.9	1	5% 20

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COMPARISON OF PUPILS AND PROFESSIONAL STAFFING BY RACE
March 6, 1965 and 1968-69 *

School	1965 Pupils			1968-69 Pupils			Professional Staff		
	N	%	W	N	%	W	N	%	W
	N			N			N		N
	↓	↓	↓	↓	↓	↓	↓	↓	↓
Starmount	0% 481	25	3% 713		0% 20.9	1	3% 28		
Statesville Road	0% 650	295	36% 534		0% 25.9	3	9% 29		
Steele Creek	0% 222	12	2% 531		0% 10.7	1	3% 20		
Sterling	699 100%				33.9 100%				
Thomasboro	0% 885		0% 705		0% 34.3	2	7% 25		
Torrence-Lytte	1005 100%				46.1 100%				
Tryon Hills	0% 324	241	50% 245		0% 15.0	1	5% 20		
Tuckaseegee	0% 631	61	10% 553		0% 23.9	1	4% 23		
University Park	700 100%	777	100%		25.8 100%	30	91% 1		
Zeb Vance	465 100%	257	100%		19.5 100%	11	100%		

322a

Villa Heights	23	4% 594	796	94% 126	0% 28.3	23	62% 14
Wesley Heights	214	100%			8.3 79% 2.2		
Westerly Hills				0% 569			
Wilmore	6	2% 323	145	33% 293	0% 15.4	8	40% 12
Windser Park	1	0% 679	2	0% 737	0% 25.8	1	4% 27
Winterfield		0% 455		0% 689	0% 18.7	1	4% 26
Woodland	360	100%			14.8 100%		
Woodlawn		0% 283			0% 14.0		
Isabella Wyche	383	100%	222	100%	18.6 100%	12	100%

Child Development (Egn.)

Davidson, Center #1	83	41% 117			3	30% 7
Pineville, Center #2	166	32% 37			2	20% 8
Seversville, Center #3	174	31% 26			8	80% 2
Morgan, Center #4	188	91% 6			8	90% 2

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COMPARISON OF PUPILS AND PROFESSIONAL STAFFING BY RACE
March 6, 1965 and 1968-69 *

School	1965 Pupils			1968-69 Pupils			Professional Staff		
	N	%	W	N	%	W	N	%	W
Junior High									
	↓			↓			↓		↓
Albemarie Road				66	7%	881			
Alexander	0%	577		347	31%	755	0%	28.9	4 9% 4
Cochrane	0%	872		76	5%	1444	0%	35.4	6 12% 44
Coulwood	3	1%	574	119	14%	727	0%	27.1	4 11% 34
Eastway	0%	1046		3	0%	1364	0%	43.2	3 5% 55
Alex. Graham	0%	1048		8	1%	1084	0%	43.8	4 9% 43
Hawthorne	25	4%	670	492	52%	447	0%	33.9	12 27% 33
Irwin Ave.	785	100%		666	100%		42.7	100%	32 91% 1
McClintock		0%	1273	46	4%	1228	0%	51.5	2 4% 49
Northwest	773	100%	*	932	100%		33.7	100%	39 100%

323a

Piedmont	121	29% 291	428	99% 53	0%	26.8	13	52% 12
Quail Hollow		0% 766	171	12% 1261	0%	35.2	3	57% 61
Randolph			272	28% 711			2	52% 38
Ranson	9	1% 658	253	30% 586	0%	30.0	6	16% 31
Sedgefield	6	1% 920	189	19% 802	0%	40.5	5	11% 39
Smith		0% 1115		0% 1389	0%	48.6	3	57% 57
Spaugh	1	0% 930	186	19% 871	0%	42.5	6	12% 43
Williams	752	100%	893	100%	34.9	100%	37	100%
Wilson		0% 1064	60	5% 1132	0%	45.6	4	8% 45
York Rd.	(7-12)	1041 100%	727	99% 6	49.9	100%	32	91% 1
Learning Academy - 7th & 8th grades counted in JH, above,							5	19% 21

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COMPARISON OF PUPILS AND PROFESSIONAL STAFFING BY RACE
March 6, 1965 and 1968-69 *

School	Professional Staff					
	1965 Pupils			1968-69 Pupils		
	N	%	W	N	%	W
Senior High	N	%	W	N	%	W
	N	%	W	N	%	W
	↓			↓		↓
East Mecklenburg	0%	1782		155	8% 1739	
Garinger	2	0%	2266	202	9% 2157	
Harding		0%	1002	169	11% 814	
Independence				92	9% 962	
Myers Park	31	2%	1772	158	8% 1855	
North Mecklenburg	1	0%	1155	410	27% 1109	
Olympic				259	33% 522	
Second Ward	1411	100%		1139	100% 3	
South Mecklenburg	30	2%	1430	106	6% 1812	
West Charlotte	1560	100%		1569	100%	
West Mecklenburg	1	0%	1270	118	8% 1340	

Motion for Temporary Restraining Order

(Filed May 15, 1969)

Plaintiffs, by their undersigned counsel, respectfully move the Court for an order temporarily restraining the defendants from initiating or continuing the construction of new schools or new facilities at any existing schools without the specific prior approval of the Court and, as grounds therefor, show the following:

1. This action was initially filed in 1965 by forty-two black parents and students in the Charlotte-Mecklenburg School System seeking the elimination of racial segregation in the Charlotte-Mecklenburg Public Schools. An order was entered by this Court on July 14, 1965, from which the plaintiffs appealed. The Court of Appeals for the Fourth Circuit issued its opinion in 1966. *Swann v. Charlotte-Mecklenburg Board of Education*, 369 F.2d 29 (4th Cir. 1966).

The plaintiffs moved this Court for further relief on September 6, 1968, contending that the Board had failed to meet its affirmative duty to adopt and implement plans for the total and complete desegregation of the Charlotte-Mecklenburg Public Schools. (A more detailed history of this litigation is contained in plaintiffs' motion for further relief.)

2. On April 23, 1969, this Court filed an opinion and order requiring the defendant to submit plans, by May 15, 1969, "for the active and complete desegregation of teachers in the Charlotte-Mecklenburg school system, to be effective with the 1969-70 school year" and "for the active desegrega-

Motion for Temporary Restraining Order

tion of the pupils, to be predominantly effective in the fall of 1969 and to be completed by the fall of 1970."

3. The Court concluded as a matter of law:

"2. The manner in which the Board has located schools and operated the pupil assignment system has continued and in some situations accentuated patterns of racial segregation in housing, school attendance and community development. The Board did not originate those patterns; however, now is the time to stop acquiescing in those patterns."

4. The plaintiffs contended and offered evidence in support of their contention that attendance lines had been gerrymandered to foster segregation within the various schools. The Court reserved judgment on this issue:

"11. *Gerrymandering.* Gerrymandering was contended in the 1965 hearing of this case. Perhaps the evidence comes closer to proving it this time. The court is not by this order foreclosing the later assertion of that contention or, for that matter, any other contention which may be advanced, because it is the court's duty to keep the matter under advisement. However, in view of the court's orders herein which are expected to produce substantial changes in the pupil assignment system and a reappraisal of all zoning considerations, it is believed that nothing in particular need be said here about specific school district lines." (Emphasis added.)

5. The Court's expectation that its order would produce "substantial changes in the pupil assignment system and a reappraisal of all zoning considerations" was entirely rea-

Motion for Temporary Restraining Order

sonable. The order required as much and a United States District Court should expect compliance with its orders. However, the actions of the defendant since April 23, 1969, when the Court entered its order, strongly suggest that what was expected—and required—is unlikely to occur.

The administration, in response to the Court's order and under the direction of the Board, spent approximately two weeks preparing a plan. In light of the *Green* trilogy decided approximately one year ago, the Norfolk, Virginia school case (*Brewer v. School Board of the City of Norfolk*, 397 F.2d 37 (4th Cir. 1968)) decided in June of 1968 and the pendency of plaintiffs' motion for further relief, (see also, *Felder v. Harnett County Board of Education*, — F.2d — (No. 12,894, 4th Cir., April 22, 1969)) a school board acting in good faith would be expected to have developed some contingency plans. There is no evidence of such planning.

The plan which is now before the Board and which apparently is the only plan under consideration, is totally unresponsive to the directions of this Court. It does not call for "substantial changes in the pupil assignment system" and reflects no "reappraisal of all zoning considerations." It contains no hint of "active desegregation of the pupils" for the 1969-70 school year. There is no plan for pupil desegregation for the 1970-71 school year as required by the order. There is, at best, a plan to develop a plan if a consensus can be reached.

6. The Board has neither accepted the decision of the Court as a statement of the applicable law under the facts of the case nor has it sought review. Instead, it has held public meetings to hear expressions from citizens as to the social wisdom of this Court's decision. It has failed to assume its responsibility to educate the public as to the re-

Motion for Temporary Restraining Order

quirements of the law as enunciated by this Court (and the Supreme Court of the United States) but has offered a forum to those who disagree with the law. In fact, members of the Board, including its Chairman, have encouraged and joined those who express resistance to the kinds of changes required by the Constitution of the United States. (See *Monroe v. Board of County Commissioners*, 391 U.S. 450, where the Court reasserted and quoted from *Brown v. Board of Education*, 349 U.S. 249 (Brown II) a fundamental principal: "But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.")

7. The Board has had before it at its two most recent meetings the plan which was prepared by the administration—a plan which is totally unresponsive to the order of this Court. The Board has yet to act upon or even discuss the plan submitted by the administration. At the most recent meeting, on Tuesday, May 13, 1969, the Board decided only that it would ask for an extension of time within which to submit plans to the Court. (The Court has now granted a two-week extension.) No instruction was given to the administration as to the preparation of any other plan and no decision was reached as to the plan before the Board. No date was set for a further meeting of the Board.

8. At the meeting of May 13, 1969, the Board, while failing to take action upon a desegregation plan, did take action on further construction of school facilities. It approved bids on "Project 600," a new facility, and bids for renovations and additions to Wilson Junior High School,

Motion for Temporary Restraining Order

Clear Creek Elementary School and Myers Park Senior High School. These projects involve more than two million dollars in construction costs. The action taken on each of these projects was done without having adopted a plan or even a policy for the desegregation of the Charlotte-Mecklenburg Schools and, of course, no such plan had been approved by, or even filed with, this Court.

9. Plaintiffs contend that the construction of new school facilities in the absence of a legally acceptable plan for desegregation should be temporarily enjoined until it is demonstrated to the satisfaction of the Court that such facilities would contribute to, rather than detract from, the desegregation of the schools. Plaintiffs sought such relief in their motion filed in September of 1968. Plaintiffs submit that such an order was appropriate then and that such an order is required now. See, e.g., *Kelley v. Altheimer*, 378 F.2d 483 (8th Cir. 1967); *Wheeler v. Durham City Board of Education*, 346 F.2d 768 (4th Cir. 1965); *Brewer v. School Board of the City of Norfolk*, *supra*.

The Court has suggested that "[t]he Board may also consider setting up larger consolidated school units freely crossing city-county lines to serve larger areas." It may be that the Board will be required to take this course of action as part of its legal obligation to desegregate the schools. However, in continuing to plan and approve new school constructions without having adopted an effective desegregation plan, the Board is foreclosing its options in this respect. This would be true even if the Court's assumption were correct that the Board has proceeded and would continue to proceed in a good faith effort to comply with the requirements of the law. We submit that the Court can no longer indulge in such an assumption. It is crucial at

Motion for Temporary Restraining Order

this time that the Board be enjoined from continuing or initiating any further construction where evidence of good faith compliance is absent. A new school stands for generations. The course of action taken by the Board since the order was entered on April 23 is entirely inconsistent with the Board's constitutional duties and legal obligations to the Court; rather, the Board's actions have been consistent with a policy of delay and resistance to the requirements of the law.

WHEREFORE, plaintiffs respectfully pray that this motion be heard at the earliest practicable time and that upon hearing of this motion the defendant be temporarily enjoined from initiating or continuing the construction of new schools or new facilities at any existing schools.

Respectfully submitted,

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Plan for Desegregation of Schools

(Filed May 28, 1969)

In compliance with the order of the Court dated April 23, 1969, the Board of Education proposes to amend and modify the plan or policy adopted by the Board on March 11, 1965, which plan was approved by the Court, and which plan was amended by action of the Board of Education on June 13, 1967, by substituting therefor the following provisions:

PUPIL ASSIGNMENT GUIDELINES**1.*****Attendance Areas***

Attendance areas are hereby established for all schools within the Mecklenburg County Administrative School Unit and the boundaries thereof are hereby established as shown on those three certain maps this day exhibited to the Board and approved by the Board. These maps are identified and designated as follows: "Map No. 1, Attendance Areas for Elementary Schools," "Map No. 2, Attendance Areas for Junior High Schools" and "Map No. 3, Attendance Areas for Senior High Schools." The Chairman and Secretary of this Board shall each affix his signature to each map in his official capacity and the official seal of the Board shall be affixed, as evidence of its adoption by the Board. A copy of each map shall be kept at each school in the attendance areas shown thereon. The maps shall be open to public inspection in the office of the Superintendent and at the schools.

Plan for Desegregation of Schools

2.

Assignment of Pupils

All pupils within any attendance area shall be assigned to the school of his or her grade within such attendance area. Assignment for any forthcoming school term shall be made not later than the last school day or as soon thereafter as possible. In the case of children enrolled during such term, notice of assignment may be given by noting the same on the report card of the pupil thereof or any other means that will adequately insure the delivery of written notice to the parent. Except for beginners, pupils not then enrolled shall be assigned at the time of their application for enrollment.

3.

Assignment from Pre-School Clinics

Beginners (children entitled to enrollment under G.S. 115-162) may attend any pre-school clinic but shall be assigned to the first grade of the school in the attendance area where the parent resides. Written notice of each assignment shall be given by mail to the parent at the same time as the report card or other written notice to pupils already enrolled. (The word parent as used in these regulations shall denote the parents, if living together, or the parent or person in loco parentis with whom the pupil resides.)

4.

Free Choice or Transfer

After original assignment, the parent of any pupil may apply to the Board for reassignment of such pupil to any school serving his or her grade and located in any other

Plan for Desegregation of Schools

attendance area. Any such request for transfer shall be allowed as of course to the extent that the facilities and accommodations of the chosen school will permit. Application may be made for Choice I, Choice II and Choice III and transfer will be permitted, in the order of choice, to the school having the facilities and accommodations to admit such child or children. Requests for transfer shall be on a printed form available at the office of the Superintendent or at any school office. When signed, the form may be delivered or mailed to the principal of the school of original assignment or to the office of the Superintendent. No reason need be given therefor. Application for a transfer or reassignment shall be made within ten days after the date of the original assignment. If there should be requests for transfer to a particular school by more pupils from other attendance areas than the transferee school can accommodate, proximity to the school shall be the controlling factor. To encourage transfer by students from schools in which their race is in the majority to a school in which their race is in the minority, free transportation will be provided for students exercising and granted such transfer.

5.

Transfers Limited in Case of New Schools

In the case of mass assignments of pupils to newly (newly described to mean the first full year of operation) opened schools in newly created attendance areas, the Board may deny the request for the transfer of any pupil back to the school in which he was previously enrolled, if in the judgment of the Board it appears that the number of transfer requests is of such volume as to unduly reduce the enrollment in such new school or interfere with the orderly administration thereof.

Plan for Desegregation of Schools

6.

Varsity Athletics

A student who exercises the privilege of free choice under these regulations and is granted transfer to a senior high school (grades, 10, 11 or 12) other than the senior high school serving the attendance area in which he resides, shall not be eligible for participation in varsity or junior varsity athletics for the duration of the first school year of assignment in the chosen school: Except that where by reason of changes in the boundaries of attendance areas a pupil is originally assigned to a school other than the one in which he was previously enrolled, such pupil, if he chooses to return to said school and is assigned accordingly, shall be immediately eligible for varsity participation.

When a student returns to the school of original assignment, he may exercise all the privileges at said school without penalty.

The Director of Physical Education and Athletics shall administer the above regulations pertaining to athletic participation and shall maintain appropriate records in his office and shall require that similarly appropriate records be kept in the individual senior and junior high school offices pertaining to total athletic participation eligibility.

7.

School Capacity to be Determined

A rated capacity shall be established and adopted by the Board for each school facility in the Mecklenburg County School Administrative Unit prior to the date of initial assignments for any ensuing school term. Under normal

Plan for Desegregation of Schools

circumstance, additional assignments of students from outside the official attendance area of each specific school will be limited to a total anticipated enrollment to be established within 10 days after the close of the school term in each year not to exceed the maximum capacity of the school plus ten per cent of such capacity in the school. All requests from a majority race to a minority race will be granted within 20 per cent of such capacity before other transfers are granted.

The determination of the majority race will be based upon the pupil enrollment of the school at the time original assignments are made.

The limitation of school capacity shall not apply to new residents in an attendance area.

The Board will act upon transfer requests immediately after determination of such anticipated enrollment for an ensuing term, as hereinabove provided for, and the determination at that time shall control notwithstanding subsequent changes in enrollment at any school.

8.

Transportation

Where transportation is provided in any school attendance area, the school buses will not normally operate beyond the boundaries of such attendance area, and therefore, it will not be practicable to transport a pupil residing in one attendance area to the school of his choice in another attendance area. The only exception to this provision will be that for pupils who have exercised free choice of transfer from a school in which their race is in the majority to a school in which their race is in the minority, free trans-

Plan for Desegregation of Schools

portation will be provided. Provided, however, that any other pupil residing in any attendance area and attending school in another attendance area may have transportation to such school from any regular stop for receiving pupils and from the school to any regular stop for discharging pupils within such attendance area.

9.

Enrollment Continues for School Term

Any child enrolled in any school after original assignment or by transfer after original assignment shall remain in the school of enrollment for the school term, and no subsequent transfer will be permitted except for a change of residence from one attendance area to another, or for a return to the original assignment as provided in Section 4, or for other good cause shown. In the event of change of residence, the pupil may elect to remain in the school of enrollment for the remainder of the school term. A pupil enrolled in a school in an attendance area other than that of his or her residence shall be advanced, at the appropriate time, to junior or senior high school, as the case may be, serving the attendance area in which the pupil resides. This provision shall not have the effect of denying such pupil the right to transfer to another school of his grade and choice at the end of the term of the school in which the pupil is enrolled.

In the event a student has dropped out of school and then desires readmittance, requesting a transfer to a school other than the school to which he was last assigned, a period of at least one semester must have lapsed since last date of attendance and the request must follow the procedure heretofore outlined in these guidelines.

Plan for Desegregation of Schools

10.

Special Education and Special Abilities and Talents Students

When children are identified as eligible for Special Education and SAT classes, they will be assigned to the suitable class in their attendance areas or, if no space is available, they will be placed on the appropriate waiting list for assignment as space is available. Currently applicable attendance areas are identified on attendance area maps for Special Education and SAT. While administrative responsibility for assignment to Special Education or SAT classes is shared by the home school principal and the pupil assignment office, the recommendation for such assignment must come from the Special Education or SAT Department. Such recommendations are made to the home school principal after the prescribed identification and evaluation procedures have been completed.

Freedom of choice as outlined elsewhere in this document will apply to Special Education and SAT pupils insofar as comparable class placement is available in the schools of choice.

Requests for assignment from Special Education or SAT classes to regular classes will be received and acted upon by the principal of the school in which the pupil is enrolled. Decision of such requests can be made only after appropriate involvement of and recommendations from the Director of Special Education or the Director of SAT.

Plan for Desegregation of Schools

11.

Tuition Students

No student residing outside of Mecklenburg County shall be permitted to attend the Charlotte-Mecklenburg Schools. If a student is living within Mecklenburg County but his parents or legal guardians are living outside the county, said student may attend the Charlotte-Mecklenburg Schools upon payment of a \$100 tuition fee for the school year subject to approval by the Superintendent of Schools. This tuition fee is to be collected by the principal of the school the student is entering and forwarded to the Treasurer of the Charlotte-Mecklenburg Schools.

If a parent owns property on which he resides and it is partially in Mecklenburg County and partially in another county but it is a continuous piece of property, the child or children of said parent would be permitted to attend the Charlotte-Mecklenburg Schools. Students of parent residing outside of Mecklenburg County but who own a separate piece of property in Mecklenburg County are not eligible for attendance in the Charlotte-Mecklenburg Schools.

Determining legal residence of a student shall be the responsibility of the principal in the school where the child is requesting entrance.

12.

Effective Date and Duration of Rules and Regulations

These policies and guidelines shall control the assignment and reassignment of pupils for the forthcoming 1969-1970 school term and shall be and remain in full force and

Plan for Desegregation of Schools

effect until amended, modified or altered by the Board and due public notice thereof given. Upon the opening of new schools, the policies set forth herein shall prevail in the establishment of new attendance areas for such schools.

13.

Notice of Rules and Regulations

These policies and guidelines shall be spread upon the Minutes of this Board and notice of their adoption by the Board shall be given promptly once a week for two weeks in the Charlotte Observer and the Charlotte News and by such other means as the Board may consider desirable to give adequate and effective notice of the same.

II

METROPOLITAN HIGH

The Board of Education has determined that Second Ward High School shall be converted into a model specialized school serving all students residing with Mecklenburg County. The high school attendance areas surrounding Second Ward High School will be redrawn in order that students attending Second Ward High School may be reassigned to the school serving the district in which they reside. It is anticipated that as a result of the elimination of the present Second Ward High School a large majority of the Second Ward students would be reassigned to predominantly white schools.

Plan for Desegregation of Schools

III

FACULTY DESEGREGATION

The Board of Education in recognition of its duty to achieve substantial faculty desegregation within the school system, will carry out the following procedures:

1. Teachers having a high degree of motivation and an interest in volunteering for service in achieving this objective will be actively sought.
2. Currently employed teachers will be allowed to move with co-workers wherever possible.
3. Currently employed teachers will be given an opportunity to indicate their choices of schools and consideration will be given to these insofar as possible.
4. Newly employed teachers will be carefully assigned in an effort to further desegregate faculties.

In the event the above procedures fail to achieve a substantial faculty desegregation, the Board will exercise its power to assign faculty for this purpose.

These policies and guidelines shall control the assignment and reassignment of teachers for the forthcoming 1969-70 school term and shall be and remain in full force and effect until amended, modified or altered, by the Board of Education and due public notice thereof given. These policies and guidelines shall be spread upon the Minutes of this Board.

Plan for Desegregation of Schools

IV

EDUCATIONAL ASSISTANCE TO UNDER-ACHIEVERS

The Board of Education recognizes that it has a responsibility to provide the best educational program possible for all students. It further recognizes that there are some students who are served less effectively than others and that the system has a unique responsibility to these students. The Board of Education intends to make every effort to offer supplementary support to these young people by providing additional funds to the extent that they can be made available for use in employing additional staff, providing a broader range of curricular offerings and developing learning materials for pupils of varying levels of educational maturity.

I, William C. Self, Superintendent of the Charlotte-Mecklenburg school system and Secretary to its Board of Education, do hereby certify that the foregoing is a true, perfect and correct copy of the plan for further desegregation of the Mecklenburg School Unit as adopted by the Board of Education on the 21st day of May, 1969, and spread upon its minutes, as amended on May 27, 1969.

This the 28th day of May, 1969.

Secretary to the Board
William C. Self

**Report in Connection With Submission of
Plan of Desegregation**

(Filed May 28, 1969)

The defendant, through its attorneys of record, respectfully submits to the Court its plan, the same being attached, for further desegregation of the schools of the Charlotte-Mecklenburg School Administrative Unit as approved by the Board of Education.

With reference to pupil desegregation, the Board held extensive deliberations and study of the alternative suggestions by the Court and other alternatives and reached the conclusion that there were no possible means of getting the children together without substantial compulsory bussing and, in effect, destroying the neighborhood system, whereby, in the City of Charlotte, children in general attended those schools near to their homes as has been the practice in the City of Charlotte for many years.

It is the judgment of the Board that the plan submitted herewith will accomplish further desegregation of pupils within the various schools. Under this plan, after the construction of Metropolitan High School, less than 500 Negro students (some West Charlotte High School graduates) during the course of their education may finish school without attending a predominantly white school. By continuing freedom of transfer and providing free transportation for students transferring from a majority race to a minority race school, these students, as is the case with all students within the system, may attend desegregated schools at all levels of their education. All white students will continue attending some desegregated schools in the course of their education. The Board and its staff will give reasonable publicity and notice of its free transportation offer.

*Report in Connection With Submission of
Plan of Desegregation*

With reference to Metropolitan High School, the plan provides for establishing a county-wide attendance area for this school. Upon construction of the school, students of Second Ward High School will be assigned to those schools with attendance lines adjoining those of Second Ward High School, most of which have predominantly white student enrollment. The student and faculty population of the new Metropolitan High School is expected to be substantially desegregated.

In connection with faculty desegregation, it is believed that the present plan offers substantial progress in achieving a reasonable degree of faculty desegregation. The plan embodies a voluntary approach to teachers in seeking their agreement to transfer, assignment of new personnel and assignment of teachers in the event reasonable desegregation is not achieved. It was reported that the Classroom Teachers Association out of a survey of 1,300 teachers reporting indicated that 240 teachers were agreeable to transfer to schools in which their race was in a minority. By projecting this figure, it would appear that in excess of 600 teachers in the system would be willing to voluntarily transfer. In addition, the school system expects to employ 700 new teachers to fill an expected 600 vacancies and 100 positions created by growth in the student population, such new teachers to be assigned in such manner as to achieve further racial balance of faculties. In the event the foregoing procedures do not insure substantial desegregation of faculties, the Board will then reassign faculty members to achieve this result.

The Board of Education's staff proposes to implement faculty desegregation in the following manner:

*Report in Connection With Submission of
Plan of Desegregation*

1. Solicit the help of the presidents of the local professional organizations.
2. Use the facilities of the educational television station to encourage teachers to volunteer.
3. Make available to teachers a form requesting voluntary reassignment. (See attached copy.)
4. Call together those who are presently teaching in opposite race situations to request their assistance.
5. Seek to retain in their present positions as many as possible of those who are teaching in opposite race situations.
6. No faculty member will be dismissed or demoted or denied employment or promotion because of race or color.
7. Encourage schools to invite volunteers to meet faculty members prior to the end of the school term.

During the 1969-70 school year, the Board of Education will carry on an intensive in-service education program for volunteers and newly assigned personnel who are teaching in opposite race situations. To accomplish this:

1. Teachers who are transferred and newly assigned teachers will be offered a two weeks' summer workshop. Those who participate will receive a stipend of \$100 per week. The cost of such a program is estimated as \$200,000. An extensive effort will be made to underwrite the cost with funds from federal and state sources. If this attempt is unsuccessful, the project will be supported by local funds.

*Report in Connection With Submission of
Plan of Desegregation*

2. The Board of Education will renew the request for curriculum planning time for teachers which was approved by the Board of Education on October 8, 1968. The original plan which provided for planning time twice a month will be amended to provide for dismissal of pupils at approximately 1:00 p.m. one day per week. If necessary, the Board will petition the legislative delegation for emergency enabling legislation.
3. The in-service education department will be assigned a sum of \$10,000 for the employment of substitute teachers. The substitutes will be used to free experienced and highly qualified staff members for a period of time so that they may give added support to their fellow teachers through in-service workshops.

Attached to this report is a form for voluntary reassignment which the Board presently contemplates using in the faculty assignment. The Board does not represent that the procedures are inflexible or fixed as conditions in the future may warrant change as circumstances may dictate.

In further improving the quality of education, the Board will seek to secure supplementary support for schools with pupils having test scores which are two years or more below the Charlotte-Mecklenburg median on paragraph meaning. In order to bring the expenditure for these pupils up to the national average per pupil, expenditure will require an additional \$100 per pupil. Since approximately 13 per cent of the pupils in the system are in this category, the total expenditure will be about \$1,100,000. A small percentage of this amount will be used to employ staff support not assigned to a specific school, and the remainder will be apportioned among the schools on the basis of the per-

*Report in Connection With Submission of
Plan of Desegregation*

centage of qualifying pupils enrolled in each school. The principal and his teachers will be asked to submit a plan outlining how the allocation is to be spent. By a special formula, the allocation for supplementary support will be determined.

Submitted for information of the Court are proposed letters to be delivered to the child for delivery to the parent with respect to free choice of transfer, marked Exhibit "B", notice of assignment, marked Exhibit "C", tabulation of school capacities and projected enrollment, marked Exhibit "D" and data on effect of free choice of transfer, marked Exhibit "E".

The Board is not unmindful of the suggestions by the Court in its order and therefore sought the assistance of the State Department of Public Instruction prior to formulation of the attached plan. At a recent conference of the National School Board Association attended by several School Board members, it was reported by a representative of the Department of Health, Education and Welfare that his department regarded desegregation under court orders as basically a local matter, and therefore, no real assistance was offered to local school boards in preparing plans for compliance with court orders. It was, therefore, deemed fruitless to pursue the suggestion of the Court in this regard.

Respectfully submitted,

/s/ Brock Barkley
818 Law Building
Charlotte, North Carolina

/s/ William J. Waggoner
1100 Barringer Office Tower
Charlotte, North Carolina

CHARLOTTE-MECKLENBURG SCHOOLS

346a

VOLUNTARY REASSIGNMENT

Staff Member's Statement

Recognizing my professional responsibility to teach young people of all races and the value which an integrated faculty can have for the total education of pupils, I volunteer for reassignment to a school where the majority of the current staff is of a race other than mine. I shall appreciate consideration being given to the following request.

1. To be reassigned to one of the following schools:

1st choice _____ Grade/Subject _____
2nd choice _____ Grade/Subject _____
3rd choice _____ Grade/Subject _____

2. To be reassigned with the following co-workers who have volunteered for similar school assignments:

1. _____ 3. _____
2. _____ 4. _____

Certification: Class "A" Class "G" Other: _____

Record of service in the Charlotte-Mecklenburg Schools:

School	Grade/Subject	Dates of employment
_____	_____	From _____ To _____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Mr., Mrs., Miss: _____
(signature)

Race: _____

Address: _____
(street)
(city) _____ (state) _____

Telephone: _____

Date: _____

Please send one copy of this form to the personnel office by June 4, 1969. One copy should also be filed with your principal.

Administrative action by the Personnel Department
School assignment for 1969-70: _____ Grade/Subject: _____

Signature: _____ Date: _____

May 27, 1969

Dear Staff Members:

As the first step in achieving substantial faculty integration for 1969-70, the Board of Education has directed that we actively seek volunteers for reassignment from our current staff.

We ask that you consider the importance of this undertaking and the role which you may have in it. If you are willing to volunteer for this service, please complete the form on the reverse side and return it to the personnel office by June 4.

We appreciate your cooperation and your understanding as we seek the attainment of this goal.

Sincerely,

William C. Self
William C. Self
Superintendent

G. L. Anderson Jr.

W. L. Anderson, Jr.
Assistant Superintendent
Personnel

THE CHARLOTTE-MECKLENBURG SCHOOLS

348a

Pupil's last name _____ First name _____ Middle name _____

Address _____ Telephone number _____

School last attended _____

Original Assignment for 1969-70: Grade: _____
(Please so indicate if in Special Education or SAT Program.)

School: _____

Date of original assignment: June 5, 1969

School Address Code _____

Race: _____

Request for Transfer:

First Choice: _____ School _____

Second Choice: _____ School _____

Third Choice: _____ School _____

Signature of adult with whom pupil lives: _____

Relationship to pupil: _____

Mail or deliver by June 15, 1969 to any school office or to the Pupil Assignment Office, Charlotte-Mecklenburg Schools, P.O. Box 149, Charlotte, North Carolina 28201

Do not write in space below this line

Assignment: _____

Date: _____

Signature: _____

For school official receiving request:

Date received or Postmarked

By Whom Received: _____ *

CHARLOTTE-MECKLENBURG SCHOOLS
ROBINSON CHURCH ROAD
CHARLOTTE, NORTH CAROLINA

Notice to All Parents:

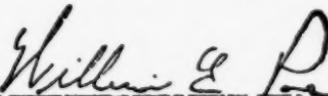
Your child has been assigned on the back of this notice to the school serving the attendance area in which you live or to the school which your child attended through free choice during the 1968-69 school year. The Board of Education policy states that "After original assignment the parent of any pupil may apply to the Board for reassignment in any other attendance area" and that "any such request for transfer shall be allowed - to the extent that the facilities and accommodations of the chosen school will permit." The only exception to this is in newly constructed schools for which attendance areas have been created.

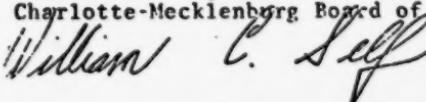
FREE TRANSPORTATION SHALL BE PROVIDED TO ANY PUPIL WHO EXERCISES AND IS GRANTED A MAJORITY RACE TO MINORITY RACE TRANSFER.

Provision is made on the back of this notice for your use if you are not satisfied with the assignment of your child and want to request reassignment. This request for reassignment must be made not later than June 15, 1969.

Parents are assured that school personnel will neither favor nor penalize any pupil because of the choice he makes in the exercise of his rights under this plan.

Maps showing school attendance areas may be found in the office of each school of the system and at the Board of Education office.


William E. Poe, Chairman
Charlotte-Mecklenburg Board of Education


William C. Self, Superintendent
Charlotte-Mecklenburg Schools

CHARLOTTE-MECKLENBURG SCHOOLS

Charlotte, North Carolina

NOTICE OF ORIGINAL ASSIGNMENT

The original assignment for your child _____
for the 1969-70 term is grade _____,

Date: _____ Signed: _____

MJK:mf

Exhibit "C"

CHARLOTTE-MECKLENBURG SENIOR HIGH SCHOOLS

1969 - 1970

351a

NAME OF SCHOOL	TOTAL TEACHING SPACES.	RATED CAPACITY (27)	MAXIMUM CAPACITY			PROJECTED ENROLLMENT	OPEN OR CLOSED
			(30)	+ 10%	+ 20%		
East Mecklenburg	70	1890	2100	2310	2520	2130	
Garinger	73	1971	2190	2409	2628	2515	
Harding	37	999	1110	1221	1332	1000	
Independence	41	1107	1230	1353	1476	1150	
Myers Park	60	1620	1800	1980	2160	1990	
North Mecklenburg	49	1323	1470	1617	1764	1670	
Olympic	31	837	930	1023	1116	785	
Second Ward	41	1107	1230	1353	1476	1135	
South Mecklenburg	55	1485	1650	1815	1980	2115	
West Charlotte	65	1755	1950	2145	2340	1475	
West Mecklenburg	55	1485	1650	1815	1980	1575	

CHARLOTTE-MECKLENBURG JUNIOR HIGH SCHOOLS

1969-70

352a

NAME OF SCHOOL	TOTAL TEACHING SPACE	RATED CAPACITY (27)	(30) + 10% + 20%	MAXIMUM CAPACITY	PROJECTED ENROLLMENT		OPEN OR CLOSED
					1969-70	1970-71	
Allendale Road	25	675	750	825	900	990	
Alexander	32	864	960	1056	1152	1150	
Cochrane	44	1168	1320	1452	1584	1590	
Colwood	27	729	810	891	972	830	
Fortney	41	1107	1230	1353	1476	1360	
Alexander Graham	34	918	1020	1122	1224	1030	
Hawthorne	44	1168	1320	1452	1584	1075	
Irvin Avenue	29	783	870	957	1044	630	
McClintock	38	1026	1140	1254	1368	1465	
Northeast	40	1080	1200	1320	1440	940	

NAME OF SCHOOL	TOTAL TEACHING SPACE	RATED CAPACITY (28)	MAXIMUM CAPACITY $(30) + 10\% + 20\%$	PROJECTED ENROLLMENT		OPEN OR CLOSED
				2020	2040	
Piedmont	25	675	750	825	900	495
Quail Hollow	49	1323	1470	1617	1764	1490
Randolph	40	1080	1200	1320	1440	1020
Ranson	23	621	690	759	828	865
Sedgefield	32	864	960	1056	1152	1020
Smith	44	1188	1320	1452	1584	1430
Sprauh	34	918	1020	1122	1224	1040
Williams	32	864	960	1056	1152	940
Wilson	35	945	1050	1155	1260	1265
York Road	26	702	780	858	936	785

1969-70

354a

NAME OF SCHOOL	TOTAL TEACHING SPACE	RATED CAPACITY (28)	MAXIMUM CAPACITY (30) + 10% + 20%	PROJECTED ENROLLMENT	OPEN OR CLOSED
Albemarle Road	16	448	480	528	576
Alexander	15	420	450	495	540
Allenbrook	20	560	600	660	720
Ashley Park	23	644	690	759	828
Bain	22	616	660	726	792
Barringer	19	532	570	627	684
Berryhill	36	1008	1080	1188	1296
Bethune	15	420	450	495	540
Beverly Woods	20	560	600	660	720
Billingsville	24	672	720	792	864
Briarwood	20	560	600	660	720
Bruns Avenue	26	728	780	858	936
Chantilly	18	504	540	594	648
Clear Creek	7	196	210	231	252
Collinswood	23	644	690	759	828
Cornelius	16	504	540	594	648
Cowenold	20	500	560	620	720

NAME OF SCHOOL	TOTAL TEACHING SPACE	RATED CAPACITY (28)	MAXIMUM CAPACITY (30) + 10% + 20%	PROJECTED ENROLLMENT	OPEN OR CLOSED
Berita	31	868	930	1023	1116
Devonshire	24	672	720	792	864
Dilworth	24	672	720	792	864
Double Oaks	25	700	750	825	900
Druid Hills	18	504	540	594	648
Eastover	24	672	720	792	864
Elizabeth	21	588	630	693	756
Enderly Park	12	336	360	396	432
Fairview	26	728	780	858	936
Firut Ward	23	784	840	924	1008
Hickory Grove	17	476	510	561	612
Hidden Valley	24	672	720	792	864
Highland	12	336	360	396	432
Hoskins	12	336	360	396	432
Huntersville	26	728	780	858	936
Huntington Farms	22	616	660	726	792
Idlewild	24	672	720	792	864
Amay James	10	280	300	330	360
					505

NAME OF SCHOOL	TOTAL TEACHING SPACE	RATED CAPACITY (28)	MAXIMUM CAPACITY (30) + 10%	PROJECTED ENROLLMENT + 20%	OPEN OR CLOSED
Lakeview	16	448	480	528	576
Lansdowne	28	784	840	924	1008
Lincoln Heights	24	672	720	792	864
Long Creek	19	532	570	627	684
Marie Davis	30	840	900	990	1080
Matthews	35	960	1050	1155	1260
Merry Oaks	18	504	540	594	648
Midwood	19	532	570	627	684
Montclair	25	700	750	825	900
Myers Park	20	560	600	660	720
Nations Ford	24	612	720	782	854
Newell	22	616	660	726	792
Oakdale	20	560	610	660	720
Oakhurst	20	560	600	660	720
Oaklawn	44	672	720	792	864
Olde Providence	20	560	600	660	720
Park Road	40	960	1000	1080	1200

NAME OF SCHOOL	TOTAL TEACHING SPACE	RATED CAPACITY (28)	MAXIMUM CAPACITY (30) + 10% + 20%		PROJECTED ENROLLMENT	OPEN OR CLOSED
			(30)	+ 20%		
Pineville	20	560	600	660	720	550
Pinewood	24	672	720	792	854	715
Plaza Road	16	448	480	523	576	510
Roma Road	24	672	720	792	854	820
Sudanfield	21	588	630	693	756	565
Sunrise	20	560	600	660	720	620
Shanrock Gardens	18	504	540	594	644	535
Shares	20	560	600	660	720	410
Starmount	24	672	720	792	854	800
Stevensville Road	24	672	720	792	854	625
Stevens Creek	16	448	480	528	576	560
Stevensboro	27	736	610	691	972	690
Taylor Hallie	20	560	600	660	720	470
Tuckaway	20	500	500	560	720	600
University Park	24	672	720	792	854	750
Villas Heights	25	700	750	825	900	960
Westerly Hillia	16	448	480	528	576	605
Villages	17	476	510	561	612	440

NAME OF SCHOOL	TOTAL TEACHING SPACE	RATED CAPACITY (28)	MAXIMUM CAPACITY (30) + 10% + 20%	PROJECTED ENROLLMENT	OPEN OR CLOSED
Windsor Park	24	672	720	792	854
Winterfield	24	672	720	792	864
Isabella Wyche	19	532	570	627	684
Zeb Vance	12	336	360	396	432
TOTAL	1595	44660	47,850	52635	57,420
					45,630

APRIL 1, 1968 SURVEY OF
PUPILS TO BE MOVED IF FREEDOM OF CHOICE IS ENDED*

Schools	Pupils to send to own district		Pupils to receive from another school (reside in district)		Total to Move	Net effect to minority (more de-segregation)
	W	N	W	N		
Elementary	1530	292	1530	292	3644	+ 525
Junior High	1040	410	1040	410	2900	+ 495
Senior High schools	676	593	676	593	2513	+ 336
	3246	1285	3246	1285	9062	+1356

NET EFFECT IN DETAIL

Schools	No. Pupils
---------	------------

Elementary

- To 15 schools (predominately Negro): Add 515 White pupils
- To 16 schools (predominately White): Add 83 Negro pupils
- In 16 schools (predominately White): Send 73 Negro pupils

Junior High

- To 6 schools (predominately Negro): Add 501 White pupils
- To 6 schools (predominately White): Add 63 Negro pupils
- In 6 schools (predominately White): Send 63 Negro pupils

Senior High

- To 2 schools (predominately Negro): Add 15 White pupils
- To 7 schools (predominately White): Add 253 Negro pupils
- In 2 schools (predominately White): Send 6 Negro pupils

NET EFFECT	Add 1356 Pupils to Minority
------------	-----------------------------

Based upon count of Pupil Accounting and Data Processing offices.
Count has errors due to limited time and difficulty to count pupils residing in grid squares on map which were crossed by school boundary.

April 1, 1959
DATA ON EFFECT OF FREEDOM OF CHOICE

School	Predomi- nant race	Pupils attending from outside district*		Pupils in district attending another school**		Net Effect without Freedom of choice to Minority
		()	V	N	V	
Elementary						
Albemarle Road	(W)	70	2	19	0	- 2 V
Alexander Street	N	0	33	0	3	-
Allenbrook	W	5	0	17	0	-
Ashley Park	W	77	0	14	0	-
Bain	W	15	1	15	0	- 1 V
Barringer	N	15	2	34	10	+19 V
Berryhill	W	157	2	26	0	+ 2 V
Bethune	N	0	0	1	0	+ 1 V
Beverly Woods	W	7	0	7	1	+ 1 V
Billingsville	N	0	0	13	11	+13 V
Briarwood	W	16	7	11	0	- 7 V
Bruns Avenue	N	0	0	1	7	+ 1 V
Chantilly	W	7	0	34	0	-
Clear Creek	W	0	0	20	6	+ 6 V
Collinswood	W	11	0	11	0	-
Cornelius	W	6	12	27	5	- 7 V
Cotswold	W	12	9	1	0	+ 9 V
Davidson	W	11	0	3	7	+ 7 V
Marie Davis	N	0	12	1	0	+ 1 V
Derita	W	51	9	32	12	+3 V
Devonshire	W	14	0	8	0	-
Dilworth	W	2	9	38	0	- 9 V
Double Oaks	N	0	36	0	6	-
Druid Hills	N	0	8	9	14	+ 9 V
Eastover	W	72	1	62	0	+ 1 V
Elizabeth	N	0	0	40	1	+40 V
Enderly Park	W	7	0	23	1	+ 1 V
Fairview	N	0	3	35	2	+35 V
First Ward	N	0	3	0	24	-
Hickory Grove	W	32	5	18	2	- 3 V
Hidden Valley	W	76	0	8	0	-
Highland	W	34	1	4	0	- 1 V
Hoskins	W	16	0	27	17	+17 V
Huntersville	W	34	15	14	12	- 3 V
Huntingtowne Farms	W	24	0	17	1	+ 1 V

Elementary Community	Predomi- nant race	Pupils attending from outside district*		Pupils in district attending another school*		Net Effect without Freedom of Choice to Minority
		() W	N	W	N	
Old	W	70	1	3	0	- 1 N
Janes	N	0	0	216	0	+216 W -- 4,77
ter	N	6	9	51	10	+45 W
onne	W	50	1	1	0	- 1 N
n Heights	N	0	11	0	4	-
Greek	W	19	0	25	3	+ 3 N
ms	W	11	0	26	0	-
Oaks	W	23	0	7	0	-
nd	W	57	0	3	4	+ 4 N
leire	W	52	0	30	0	-
Park	W	Have Adv. Classes		8	0	-
ns Ford	W	0	0	13	1	+ 1 N
l	W	37	4	13	0	- 4 N
le	W	46	23	2	3	-20 N
rst	W	21	2	7	0	- 2 N
am	N	0	26	2	17	+ 2 W
rovidence	W	26	0	12	0	-
oad	W	40	0	13	0	-
reek	W	0	0	7	0	-
ille	W	0	0	11	12	+12 N
ood	W	57	0	6	0	-
Road	W	8	0	54	7	+ 7 N
Road	W	0	0	24	0	-
ield	W	10	0	1	0	-
n	W	13	0	5	0	-
ock Gardens	W	28	0	4	0	-
n	W	18	0	26	1	+ 1 N
ount	W	15	0	72	0	-
sville Road	W	11	11	35	24	+13 N
Creek	W	0	0	0	4	+ 4 N
storo	W	35	0	19	0	-
Hills (Trend to N)	2	0	91	6	-	+89 W
seegee	W	36	0	1	0	-
iversity Park	N	0	34	1	7	+ 1 W
rance	N	0	0	0	0	-
Heights	N	0	0	42	6	+42 W
ly Hills	W	63	0	3	0	-
re	W	0	0	12	2	+ 2 N
or Park	W	0	0	20	0	-
field	W	5	0	73	0	-
Ga Wyche	N	0	0	1	11	+ 1 W

School Junior High	Predomi- nant race	Pupils attending from outside district*		Pupils in district attending another school*		Net no. with Freedom of to Minority
		() W	N	W	N	
Albemarle Road	W	52	2	17	0	+ 2
Alexander	W	15	6	23	18	+12
Cochrane	W	73	0	29	19	+10
Coulwood	W	38	1	12	5	+ 4
Eastway	W	79	1	34	0	- 1
Alexander Graham	W	95	1	30	1	-
Hawthorne	N	30	12	174	54	+114
Irwin Avenue	N	0	47	33	44	+33
McClintock	W	105	0	36	5	+ 5
Northwest	N	0	30	14	54	+14
Piedmont	N	21	21	131	29	+110
Quail Hollow	W	46	2	46	0	- 2
Randolph	W	73	6	45	7	+ 1
Ranson	W	46	40	15	17	-2
Sedgefield	W	105	45	102	8	-37
Smith	W	92	0	36	0	-
Spaugh	W	77	19	53	18	- 1
Williams	N	0	96	10	32	+10
Wilson	W	71	3	17	22	+19
York Road	N	0	74	190	67	+190

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High Predomi- nant race	Pupils attending from outside district*		Pupils in district attending another school*		Net Effect without Freedom of Choice to Minority
	()	W	N	W	
cklenburg	W	92	0	93	+69 N
er	W	81	13	138	+53 N
W	109	27	51	44	+17 N
idence	W	128	3	35	- 3 N
ark	W	78	21	55	+61 N
cklenburg	W	49	19	22	+11 N
er	W	25	16	58	+24 N
Verd	W	0	353	57	+57 W
cklenburg	W	52	4	59	- 3 N
ariotte	N	0	111	29	+29 W
cklenburg	W	62	5	62	+21 N

364a



State of North Carolina

MAP - PUBLIC LIBRARY
LIBRARY AND READ ROOM

Superintendent of Public Instruction
Raleigh 27602

May 22, 1968

Mr. William E. Poe, Chairman
Charlotte-Mecklenburg Board of Education
Box 149
Charlotte, North Carolina 28201

Dear Mr. Poe:

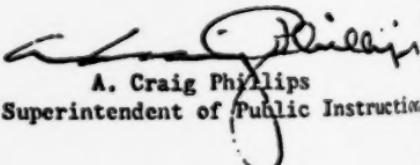
This letter is to indicate to all concerned that you and several members of the Charlotte-Mecklenburg school staff have consulted with me and members of my staff regarding the recent Court Decision handed down by Judge James B. McMillan.

While we were not able to find a perfect solution to the tremendous problem which you face, I do hope that our comments were of some help to you.

You and your Board are faced with a most difficult task. The entire State will be interested in the steps you take to deal with it.

You have our best wishes.

Sincerely,


A. Craig Phillips
State Superintendent of Public Instruction

ACP/jt

Response to Motion for Temporary Restraining Order**(Filed May 29, 1969)**

The defendant, by and through its counsel, responding to the plaintiffs' motion for a temporary restraining order dated May 15, 1969, respectfully shows unto the Court as follows:

1. Paragraphs 1 through 7 of the plaintiffs' motion for a temporary restraining order relate to plaintiffs' contentions and conclusions with respect to the present posture of this action and also contains plaintiffs' erroneous conception of action taken by the Board of Education subsequent to entry of the order of April 23, 1969. Suffice it to say, the Board of Education has been moving diligently in an effort to review not only the various alternatives suggested by the Court, but also other alternatives.
2. The construction of Project 600 and renovations to Wilson Junior High School, Clear Creek Elementary School and Myers Park Senior High School represent the culmination of extensive planning, representations to voters, representations to communities within the system, and expenditure of substantial time, not only by the school staff and affected principals, but also by architects who are now entitled to and have been paid substantial commissions for the services performed thus far.
3. In 1967, prior to the \$35,000,000 school bond vote, the School Board gave extensive publicity by way of newspaper, television, public meetings throughout the county and other methods by which specific use of the proceeds of the proposed bond issue was outlined with reference to how it would affect and improve educational facilities in the various areas of the school district. Substantial reli-

Response to Motion for Temporary Restraining Order

ance by the voters upon the proposed allocation and use of funds is believed to be a major factor in the passage of the bond issue. The proposal specifically covered the schools and the approximate amount of funds to be expended at the various schools. To halt the construction proposed at these schools would, in effect, amount to a breach of trust to the voters of this school district.

4. It is submitted that the \$35,000,000 bond issue as approved represents a most minimal capital funds program to provide an upgrading of schools in the school district. The school staff initially proposed a building program of \$70,000,000 to be expended over a five-year period beginning 1967. After evaluating the proposed program and the anticipated voter response, the Board of Education reduced the bond request to \$35,000,000 to cover the most acute building needs in the community. The building program sought to be enjoined represents some of the most pressing needs as indicated by the following:

A. Project 600—This facility will be a junior high school located in the Carmel Road area, which is one of the fastest growing areas in the school district. It is projected for the school year beginning September, 1969, that Smith Junior High School will be overcrowded by 230 pupils, McClintock Junior High School will be overcrowded by 350 pupils. It is contemplated that the attendance lines will be adjusted in such manner as to place approximately 600 students in this facility by relocating the Smith Junior High, Alexander Graham Junior High, Quail Hollow Junior High and McClintock Junior High attendance lines. It is estimated that a minimum of 125 Negro children will attend the new facility.

Response to Motion for Temporary Restraining Order

B. Clear Creek Elementary—This school will be replaced as it represents one of the oldest facilities in the school system. It was previously examined by architects, structural, electrical and mechanical engineers who determined that the structure should be replaced at the earliest opportunity. The students now utilize an old auditorium which was divided into three classroom teaching spaces, the school cannot conduct an adequate library program and it is projected that the school will need four additional classrooms for the next year. All mobiles owned by the county are now in service and it will be difficult to provide relief with mobile units. During the current school year, the school has a student population of 58 Negro and 225 white students.

C. Wilson Junior High—Renovations proposed for this building relate to doubling the library, art and science facilities. The present facilities are based on a school having a 600 student enrollment and it is projected that the 1969-70 enrollment will be approximately double this amount. This school has the most severe shortage of the facilities proposed for construction of any junior high school in the system. The present student population is comprised of 60 Negro and 1,132 white students.

D. Myers Park Senior High—This school has inadequate physical education facilities and the proposed construction would provide additional dressing rooms and showers which would bring it on a par with other senior high schools in the system. Enrollment consists of 158 Negro and 1,855 white students.

Response to Motion for Temporary Restraining Order

5. The school system, in the past four years, has experienced a rise in construction costs of approximately 25 per cent. In view of the continued spiraling costs of construction, any delay in the building program will in all likelihood create substantial additional costs in providing much needed educational facilities.

6. Each of the projects has been bid by the contractors, the bids have been accepted by the Board of Education (except for Myers Park High School, which was rejected and will be offered for rebidding) and the contractors have scheduled material and personnel to commence immediate construction and any delay imposed on the School Board may give rise to claims to be asserted by the various contractors or subject the projects to rebidding at increased cost.

7. The continued construction of new schools and additions to existing schools is consistent with the duty of the Board of Education to provide equal educational facilities for all students served by the school system.

WHEREFORE, the defendant respectfully prays that the motion for a temporary restraining order be denied; and in the event the restraining order should be allowed, then in such event, the plaintiff be required to post good and sufficient bond to indemnify the defendant from any loss

Response to Motion for Temporary Restraining Order

it may sustain by reason of the improvident granting of such restraining order.

Respectfully submitted,

s/ **BROCK BARKLEY**
Brock Barkley
818 Law Building
Charlotte, North Carolina

s/ **WILLIAM J. WAGGONER**
William J. Waggoner
1100 Barringer Office Tower
Charlotte, North Carolina
Attorneys for Defendant

Order dated June 3, 1969

The defendants have filed a proposed plan of action pursuant to the court order of April 23, 1969. The plaintiffs have filed a motion requesting restraint on further school construction until the school board has dealt satisfactorily with the segregation question. A further hearing is indicated. The court has two weeks of criminal court starting June 2; and Monday, June 16, 1969 is the earliest predictable time that a hearing could be conducted.

All parties are therefore notified that a hearing will be held in the United States Court House in Charlotte starting on Monday, June 16, 1969, at 10:00 a.m. All parties are requested to be present.

Under the law the burden is upon the school board to come forward with a plan which "promises realistically to work now" to eliminate segregation in the Charlotte-Mecklenburg schools. The obligation of the court under the law is "to assess the effectiveness of a proposed plan in achieving desegregation." Evidence will be received from all parties on these general subjects.

Without limiting any party in the scope and type of relevant evidence which he may wish to produce, the court directs the parties to come forward with exhibits, statistics, records, and other information so that the court will be in adequate position to make findings upon the following subjects, among others:

1. What has been accomplished, by June 16, toward achieving the duty which the defendants have accepted of "achieving substantial faculty desegregation," and what the plan proposed by the defendants may be expected to accomplish further along that line by September, 1969.
2. What school zones may fairly be said to have been gerrymandered (either by control of their boundary lines

Order Dated June 3, 1969

14. Scholastic aptitude tests and achievement tests and intelligence tests for all grades for which such data are available in all schools in the county and city since 1954.
15. What concrete and specific steps, if any, plaintiffs would have the defendants adopt in order to comply with the Constitution. The court is not interested in a restatement of the previous demand of plaintiffs that all the schools in the system be populated on a 70/30 basis, because as previously stated the court does not have the power to make such an order and the defendants have served notice that they will not undertake such an assignment themselves. What is desired is some tough and detailed thinking and planning as to detailed methods to reduce and promptly eliminate segregation in the Charlotte-Mecklenburg schools.

The above questions and requests, insofar as they call for facts and figures, call for the production—not the creation—of the desired information. Counsel are requested to advise the court immediately if the production of already existing records does not provide any of the statistical information mentioned above. It is not the intention of the court to put the parties to work creating new charts nor re-assembling existing statistics, but rather to make available existing information.

This the 3rd day of June, 1969.

/s/ James B. McMillan
James B. McMillan
United States District Judge

Order Adding Additional Parties dated June 3, 1969

Several changes in the personnel of the defendant school board have taken place since this suit was instituted. In order that all parties may be fully before the court and that there be no avoidable technical irregularity.

IT IS ORDERED that all the present members of the Charlotte-Mecklenburg Board of Education be and they are hereby made formal parties to this action; that copies of the MOTION FOR FURTHER RELIEF filed September 6, 1968 be served upon them and that there also be served upon them copies of all orders and motions that have been filed since that time.

Service of these motions and orders (including this order making new parties and the order of this same date regarding the further hearing of June 16, 1969) should be made by the United States Marshal. The members of the school board and their addresses are:

Mr. William E. Poe, Chairman
2101 Coniston Place (Home)
1014 Law Building (Office)
Charlotte, North Carolina

Mr. Henderson Belk
529 Hempstead Place
(Home)
308 East Fifth Street
(Office)
Charlotte, North Carolina

Mr. Dan Hood
Route 4
Matthews, North Carolina

Rev. Coleman W. Kerry, Jr.
1022 Kohler Avenue
Charlotte, North Carolina

Mrs. Julia Maulden
Box 6
Davidson, North Carolina

Order Dated June 3, 1969

8. Statistics on school population by race in the system for the years since consolidation and similar statistics for the separate county and city units from 1954 until consolidation.
9. The facts about school bussing operations of the Charlotte-Mecklenburg school system, including such records as already exist on bus routes, year by year, since 1961, including where the busses get the pupils and where they take them, and the races of the pupils transported.
10. The pupil attendance zones or school zones, year by year, for all years since 1954.
11. What the pending school construction programs will do in terms of creating pupil accommodations, and whether the programs will tend to perpetuate or to alleviate segregation in the schools.
12. Why decision on the construction and purposes of Metropolitan High School should not be postponed until after a final court ruling, appellate or otherwise, has been rendered, so that the decision on the educational questions can be made in a quieter and non-racial atmosphere. Also, why the defendants should not retain any land or control over any land they may now have, pending such decision.
13. Why no action has been taken by the defendants on the various possible methods for further reduction of segregation such as re-examination of zones, enlargement or combination of school zones, reorganizing the existing 23,000 pupil bus system, pairing of schools, consultation with the Department of Health, Education and Welfare, and other possible methods.

Order Dated June 3, 1969

or by control of their student capacity or both) so as to fit a particular pocket or community of all- or nearly all-black or all- or nearly all-white students; and what could be done to reduce or eliminate segregation in those zones.

3. What progress if any toward desegregation of pupils may reasonably and predictably be expected by September, 1969, from the pupil plan presented by the defendants.

4. What effect if any the pupil plan may be expected to have upon the present large group of all-black or 99%+ black schools, and upon the more than 14,000 children who still attend them.

5. Why students allowed to transfer from one zone to another to avoid racial discrimination should be penalized by being required to wait a year before taking part in varsity athletics, as the proposed pupil plan requires, which self-admitted "penalty" is lifted if they return to the zone originally assigned by the defendants.

6. The actual meaning of the "free transfer" plan—the numerical extent to which the plan requires that students wishing to transfer and being supplied transportation to transfer will actually find space in the schools of choice if they exercise their option to transfer. This is not a trick question but one directed to the ambiguity of the plan and the conflicts in the language used in the plan. Clarification is requested.

7. What steps will be followed to insure that the transfer-with-transportation choice is actually communicated personally to children who may be entitled to the choice, and to their parents, and affirmatively accepted or rejected by them.

Order Adding Additional Parties Dated June 3, 1969

Mr. Ben F. Huntley
Box 128
8301 Pineville Road
(Office)
Pineville, North Carolina

Mrs. Betsey Kelly
3501 Mountainbrook Road
Charlotte, North Carolina

Mr. Sam S. McNinch, III
2914 Hampton Avenue
(Home)
4037 E. Independence Blvd.
(Office)
Charlotte, North Carolina

Dr. Carlton G. Watkins
1223 Marlwood Terrace
(Home)
1630 Mockingbird Lane
(Office)
Charlotte, North Carolina

This the 3rd day of June, 1969.

/s/ JAMES B. McMILLAN
James B. McMillan
United States District Judge

**Motion to Set Aside Order Joining Additional
Parties Defendant**

(Filed June 12, 1969)

The defendants, corporate and individual, by and through their attorneys, respectfully request the Court to set aside the order entered on the Court's own motion, without notice and hearing, wherein Mr. William E. Poe, Chairman, Mr. Henderson Belk, Mr. Dan Hood, Mr. Ben F. Huntley, Mrs. Betsey Kelly, Rev. Coleman W. Kerry, Jr., Mrs. Julia Maulden, Mr. Sam S. McNinch, III, and Dr. Carlton G. Watkins were added as parties defendant and served with copies of all orders and motions that have been filed since September 6, 1968, and in support thereof respectfully show unto the Court as follows:

1. Rule 17-B of the Federal Rules of Civil Procedure dealing with the capacity of parties plaintiff and defendant states as follows:

“(b) CAPACITY TO SUE OR BE SUED. The capacity of an individual other than one acting in a representative capacity, to sue or be sued shall be determined by the law of his domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized . . .”

2. The defendant, Charlotte-Mecklenburg Board of Education, is a corporate body as provided by G.S. 115-27, which provides as follows:

“115-27 BOARD A BODY CORPORATE.—The Board of Education of each county in the state shall be a body corporate by the name and style of ‘The . . . county board of education’ and the board of education of each city administrative school unit in the state shall be a body

Motion to Set Aside Order Joining Additional Parties Defendant

corporate by the name and style of 'The city board of education'. The several boards of education, both county and city, shall hold all school property and be capable of purchasing and holding real and personal property, building and repairing school houses, selling and transferring the same for school purposes, and of prosecuting and defending suits for or against the corporation . . ."

3. In *Kistler v. Board of Education*, 233 N. C. 400, the plaintiff instituted suit against the Board of Education and others including the members of the Board of Education seeking to restrain the purchase of a site for a new school. Mr. Justice Denny of the Supreme Court stated:

"The Board of Education of Randolph County is the body corporate and by that name it shall hold all school property belonging to Randolph County, and it is authorized to purchase and hold real and personal property, build and repair school houses and to prosecute and defend suits for or against it in its corporate capacity. G.S. 115-45.

"The demurrer ore tenus to the complaint by the individual defendants was properly sustained. These defendants as individuals possessed no authority to exercise any of the powers that the plaintiffs seek to enjoin. *Board of Education v. Commissioners*, 192 N.C. 274, 134 SE 852."

In *McLaughlin v. Beasley*, 250 N.C. 221, suit was instituted against the individual members of the county board of education and others to enjoin the Union County Board of Education from proceeding with plans to acquire a school

Motion to Set Aside Order Joining Additional Parties Defendant

site. Again, the North Carolina Supreme Court through Justice Bobbitt stated:

"As to the individuals, who, according to the caption, constitute the members of the Board of Education, the demurrer ore tenus was properly sustained. *Kistler v. Board of Education*, supra as stated by Denny, J. 'These defendants as individuals possessed no authority to exercise any of the powers the plaintiff seeks to enjoin.'

4. Under the pleadings and evidence in this action, the Court is without authority to join the individual members of the Charlotte-Mecklenburg Board of Education as they have no capacity to be sued under the state and federal law applicable to this action.

WHEREFORE, the defendants pray that the order dated June 4, 1969, entered by the Court in this action joining the individual members of the Board of Education as parties defendant be set aside and that this action be dismissed as to such individual defendants.

/s/ BROCK BARKLEY
Brock Barkley

808 Law Building
Charlotte, North Carolina

/s/ WILLIAM J. WAGGONER
1100 Barringer Office Tower
Charlotte, North Carolina

*Attorneys for Charlotte-Mecklenburg
Board of Education, Defendant*

**Response to Defendants' Motions to Strike
Additional Parties Defendant**

(Filed June 16, 1969)

Plaintiffs, by their undersigned attorneys, respectfully move the Court to deny defendants' motions to strike the Court's order adding them as additional parties defendant, and as grounds therefor, respectfully show the Court as follows:

1. This action was brought by Negro plaintiffs seeking an order enjoining further racially discriminatory policies and practices by the School Board in the operation of the Charlotte-Mecklenburg Public Schools. On April 23, 1969, the Court entered an Opinion and Order in connection with plaintiffs' motion for further relief, finding that the Board had failed to take effective steps to desegregate the school system. The Court accordingly enjoined the defendant to present plans for complete desegregation of the system. On May 28, 1969, the Board filed its proposed plan which completely ignored the instructions of the Court and proposed to do nothing further than provide free transportation for students moving from racial majority to racial minority situations. By order, date June 4, 1969, the Court noted that there had been several changes in the personnel of the School Board since this action was instituted and ordered that all present members of the School Board be made parties-defendant to the action in order that they may be fully before the Court and aware of all proceedings in this matter. The Court directed that copies of the Pleadings, Motions and Orders, be served upon the new parties. The new parties defendant have now moved the Court that the Court strike its order adding them as parties defendant contending that they have no capacity to sue or to be sued in this proceeding.

*Response to Defendants' Motions to Strike
Additional Parties Defendant*

and that the Court is without the authority to add them as parties defendant.

2. In view of the numerous cases, particularly school cases, in which individual members of school boards have been added and found to be proper parties defendant in a school desegregation case, one is hardput to understand defendants sincerity with their motion to strike their additions as parties defendant. Rules 19 and 20 permit joinder of parties whose additions are considered necessary or proper in order to provide complete relief in pending proceedings. These rules permit joinder of parties by the Court, with or without a motion by either party, if the Court should deem their additions proper for effective disposition of the pending action. 3A Moore's Federal Practice §§ 19.18, 19.19, 20.06; 2 Barron and Holtzoff, Federal Practice and Procedure, §§ 513.7, 533. See e.g., *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218, 12 L. ed. 2d 256; *Coppedge v. Franklin County Board of Education*, 273 F. Supp. 289 (E.D.N.C., 1967), aff'd 394 F. 2d 410 (4th Cir., 1968); *Scott v. Winston-Salem/Forsyth County Board of Education*, — F. Supp. — (M.D.N.C., 1968), proper not only to join the Board of Education, but also County Board of Commissioners, State Board of Education, and State Superintendent of Public Instruction. It is patently clear that the Court has authority to join as parties all persons having responsibility for implementing the Court decree or who might interfere with others having the responsibility to implement the decree. *Lee v. Macon County Board of Education*, 267 F. Supp. 458 (M.D.N.C., 1967), aff'd; *Wallace v. United States*, 389 U.S.

*Response to Defendants' Motions to Strike
Additional Parties Defendant*

215, 19 L. ed. 2d 422. The School Board cannot act without the action of the individual members of the Board. The individual members, and not some supposed, imaginary entity are the true parties preventing the implementation of the Court's order. Plaintiffs have moved that each of the members of the School Board be ordered to show cause why they individually, and in their representative capacity, should not be held in contempt of the Court's order. As the Court has stated in its order of June 4, 1969, in order to avoid any misunderstanding or technicality, it is necessary and proper that all of the members of the School Board be brought individually before the Court and fully apprised of the Court's instructions. Their joinder is necessary and proper in order that the plaintiffs might have complete relief in this proceeding.

3. Defendants have cited several North Carolina decisions, all of which are completely inapposite to the matters involved here. The cases cited by the defendants concern generally the question of how title of school property is held. Plaintiffs do not challenge that, under North Carolina law, title of school property is in the local board of education. We are dealing here, however, with the question of desegregation of the school system and implementation of the Court order. The Courts have long sustained joinder of the individual members of school boards in such cases.

WHEREFORE, plaintiffs respectfully pray that the Defendants' Motions to Strike Additional Parties-Defendant be

*Response to Defendants' Motions to Strike
Additional Parties Defendant*

denied, and that plaintiffs be granted relief as they have prayed in this proceeding.

Respectfully submitted,

/s/ **J. LEVONNE CHAMBERS**
CONRAD O. PEARSON
203½ East Chapel Hill St.
Durham, North Carolina

J. LEVONNE CHAMBERS
216 West Tenth Street
Charlotte, North Carolina

JACK GREENBERG
DERRICK A. BELL, JR.
10 Columbus Circle
New York, New York 10019

200a

Transcript of June 16, 1969 Proceedings (Continued)
[487] ***

Buses and Drivers

Mr. Chambers: Your Honor, you find in this case we have some additional documents which we would like to identify, introduce as exhibits for the purpose.

Court: All right. If you will prepare [488] these documents and give a copy to the Court and to opposing counsel, we will discuss regarding the list or identifying them and agree upon what they're about.

Mr. Chambers: They consist of bus route maps and descriptions in the Gloucester-Mechanicsburg School System; annual reports on bus transportation by the Transportation Department of the Board.

Court: Where are they?

Mr. Chambers: For the school years 1965 through 67-68; and maps showing the district boundary lines for the school system from 1965 through 1967-68.

Mr. Waggoner: These are the documents we brought in as a result of the Court's direction.

Court: Mr. Waggoner, I received no evidence to the extent that it contains evidence the paper that you filed Monday entitled Answer to questions posed by the Court in June 4 order.

Mr. Waggoner: If the Court please, do I understand that the Court also is receiving in evidence the report filed with our plan of desegregation on May 28?

Court: Yes. If there are any specific objections, I'll entertain the objections but I assumed there were none because none have been made.

Mr. Chambers: As to the Board's report?

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【489】 Court: Yes.

Mr. Chambers: We have no objection.

Court: Is there any further evidence for the plaintiffs?

Mr. Chambers: None, Your Honor. We would like to tender in evidence the exhibits that we previously identified.

Court: Let them be received.

Mr. Barkley: We'd like to have an objection entered to the whole bunch of newspaper clippings entered in evidence. I don't believe we can try the case on the basis of newspaper clippings.

Mr. Chambers: Your Honor, we don't have but about three or four newspaper clippings that we identified and used, and the only reason for introducing those was to corroborate some testimony given by a witness.

Mr. Barkley: I don't believe a newspaper corroborates necessarily. Bring the reporter in here, his testimony might tend to corroborate or might not.

Court: I don't know whether the newspaper clippings you're talking about would contain anything corroborative or not but if they are considered by the Court that will be the only purpose for which they will be considered, whether they corroborate or rebut or impeach the testimony that has otherwise been offered. So to that extent the objection is sustained.

【490】 Mr. Chambers: We have nothing further, Your Honor.

Court: Any further evidence for the School Board?

Mr. Waggoner: Yes, sir. I'd like to call Dr. Hanes.

Dr. Robert C. Hanes—for Defendant—Direct

DR. ROBERT C. HANES, having first been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Waggoner:

Q. Will you state your full name and residence address? A. Robert C. Hanes, 1510 Audubon Road.

Q. What is your official position with the Charlotte-Mecklenburg Board of Education? A. I am Assistant Superintendent for Secondary Education.

Q. You cover the junior and senior high schools, is that correct? A. Yes, sir.

Q. Dr. Hanes, did you have occasion to deliver some documents pertaining to Metropolitan High to Mrs. Betsy Kelly? A. Yes, sir, I did.

Q. Would you tell the Court the circumstances of the conversation you had with Mrs. Kelly?

Mr. Chambers: Your Honor, I object again on the same ground that I raised yesterday. I take it that the defendant now tends to discredit his own client and a witness, I submit, should be a witness of the defendant. The party involved is a named party defendant [491] and I submit it would be improper for this type of examination to attempt to discredit one of the defendant's attorneys own clients.

Court: I'm going to overrule the objection but I do want Mr. Waggoner to say whether he does or does not continue to represent the witness Kelly, or the party Kelly.

Mr. Waggoner: If the Court please, I discussed this with Mrs. Kelly this morning and told her that in view of the developments of yesterday that I had some concern that I could properly continue repre-

Colloquy

senting her and offered to withdraw. She said that she had no personal feelings toward me and—

Court: I'm not asking a question about consent or lack of it applying but it raises a rather serious question about the propriety of the attorney in attacking the credibility of a client of his whom he is representing in court in this fashion. I have never seen it done before.

Mr. Waggoner: If the Court please, I ask permission of the Court to withdraw as counsel for Mrs. Betsy Kelly.

Mr. Chambers: I object to that, Your Honor.

Court: Tell the Court who you do represent, Mr. Waggoner. Do you represent all the members of this [492] Board except Mr. Poe.

Mr. Waggoner: If the Court please, we represent the Board of Education. The Court joined then all the members of the Board.

Court: The motion on behalf of Mrs. Kelly was filed by you and argued by you on her behalf.

Mr. Waggoner: Yes, sir. It was fairly well understood that we would continue representing the Board and represent the members of the Board for the purposes of this motion. I have had no private conversations with Mrs. Kelly in the nature of an attorney-client, no more than I have had with any other member of the Board. This was a convenience to them. We filed a joint motion on behalf of the Board and also on behalf of the individual members. I feel that perhaps it would be a little unfair for us at this time to withdraw as representing Mrs. Kelly because she hasn't had an opportunity to consult with counsel. By the same token, we have an obligation to the

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Board of Education to present the facts as fully and fairly as we can. We did not introduce this evidence into the case.

Court: Was this conflict foreseeable?

Mr. Waggoner: No, sir, I was not aware of this. As late as last week we had a meeting and we discussed [493] the plan and what we proposed doing with the motion and at that time I understood that Mrs. Kelly fully supported the Board policy.

Court: Wasn't it foreseeable that there would be some differences between some of your clients and some of your other clients about facts in the case?

Mr. Waggoner: Yes, sir, it was foreseeable but I had no idea it would ever reach the evidentiary stage. We objected to this but we have been pushed into this—

Court: As a professional matter does it leave you any comfort to know that you have come into a situation here where you are cavalierly making a choice in open court to abandon one client and pursue the others?

Mr. Waggoner: If the Court please, it is not cavalierly. The election to represent the individual Board members was purely a fortuitous circumstance that came up within the last two weeks. We have represented the Board continuously through this case. I came into it in February. If the Court please, to avoid any problem I will withdraw Dr. Hanes from the stand.

The Court: I'm not going to exclude his testimony. Frankly, I overlooked the problem when you were attacking Mrs. Kelly yesterday until it was all done.

Dr. Robert C. Hanes—for Defendant—Direct

Mr. Waggoner: It didn't occur to me until late in the evening that there was the professional possibility [494] of conflict. Mr. Gage is present. He has filed papers on behalf of Mr. Poe. Perhaps he could represent Mr. Poe as far as this aspect of the case is concerned. I think under any circumstances it would be unreasonable to expect new attorneys to come into the case when the order was entered to appear at this hearing and been of beneficial counsel to the parties.

Court: I don't know why that would be so. The order was entered two weeks ago.

Mr. Waggoner: If the Court please, this case is extremely complicated.

Court: The thing that is bothering me is a professional matter which I overlooked calling to your attention yesterday. A client is entitled to an attorney without a conflict of interests. Obviously you made a choice to pursue a conflicting course. I don't think you can pursue both courses. As a purely strongarm way out of it, if Mr. Gage wants to pursue the examination for this purpose, I'll let him question the witness but I believe in the interest of propriety you better not.

Mr. Waggoner: All right, sir.

Court: That doesn't satisfy the propriety but at least it keeps us from being afoul of it from this point forward.

[495] By Mr. Gage:

Q. Dr. Hanes, would you testify about the substance of your conversation with Mrs. Kelly, please, sir? A. I was not in court yesterday so I don't know exactly what was

Dr. Robert S. Hanes—for Defendant—Direct

said but I shall relate the incident that I think she was referring to as I recall it.

Q. We wish for you to give your own recollection of it.
A. On a Saturday morning, shortly after the Court's order was published, Mrs. Kelly called me at home. She said that she and several of her friends were reviewing the Second Ward-Metropolitan situation and that she needed another copy of the staff study on the Metropolitan High School. I told her I would be glad to mail her a copy the first thing Monday morning. As we talked on she said she needed it before then and if I were going to the office any time over the weekend would I mind picking up the document and bringing it by her house. She suggested that I should just leave it in the mail box if she were not there. Late on Saturday afternoon I took the document by her house and gave it to her son. As I was getting in the car she came to the door and called me from the porch and I walked back down the walk and stood in front of her house on the walk and talked for a few minutes. We talked about a number of things. As I tried to recall all the things that we talked about, she was critical of me and other members of the staff because she felt that we did not [496] express our views strongly enough at Board-staff meetings. I replied to the effect that the Board members themselves were divided on most issues and this was a most difficult environment in which to work. She made some comment that we should not feel that our jobs as employees of the Board of Education were threatened in that she represented five votes on the Board. I disagreed with her and said, as I recall, that my estimate was that she was one of only four people on the Board who agreed on most matters and there were five others that disagreed. I do recall saying something to the effect that this kind of split was a threat al-

Dr. William C. Self—for Defendant—Direct

though I personally was not concerned about job security. I recall saying that the tensions were high among the Board and the staff and that people were under stress and that Dr. Self and Mr. Poe had certainly had disagreements as did other Board and staff members. I don't recall making such a statement that five members of the Board were threatening Dr. Self's position. If our conversation led Mrs. Kelly to this conclusion, I regret it but it's not to my personal knowledge that this is a fact. We talked briefly about the Metropolitan High School situation and about some other individual school situations which she asked me some questions about and we discussed.

Q. Was that the entire substance of the conversation?
A. As I recall it.

Mr. Gage: Thank you, Dr. Hanes.

【497】 Mr. Chambers: No questions.

DR. WILLIAM SELF, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Waggoner:

Q. Dr. Self, will you state your name and residence address? A. Dr. William C. Self, 5834 Kirkpatrick Road.

Q. Are you Superintendent of Schools for Charlotte-Mecklenburg? A. I am.

Q. Dr. Self, when did you first receive a copy of the Court order dated April 23? A. I believe that I received it on that same day or if not, on the following morning.

Q. Did your office make these Court orders available to all members of the Board of Education? A. They did. I talked with Mrs. Gattis about this since this has been an

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object of testimony and she informed me that the copies were in Mr. Poe's hands, that Board members were called individually and were told they were there and they might pick them up, if they chose to go by.

Court: Let me inquire about this. There's been a lot of testimony about an unnecessary thing. I handed about a dozen copies to the attorneys for the School Board. What happened to those copies that day before [498] this thing was delivered to the newspapers or Clerk? What happened to those copies?

Mr. Waggoner: If the Court please, the copies were handed to me on April 23 approximately 2:00 or 2:30.

Court: It was just before or within minutes after the thing was filed in the court. What is the mystery about the information getting to the Board?

Mr. Waggoner: There is none although there has been a suggestion of it. This is what Dr. Self is testifying to.

Court: I guess I'm asking what the lawyers did with the copies of the order. The thing was held up until the order could be duplicated so there would be a copy for every member of the Board so they could have it before they read the newspapers.

Mr. Waggoner: They were not duplicated, as I understand it. Perhaps they were.

Court: Duplicated by me.

Mr. Waggoner: I received the copies that the Court instructed me were copies for the members of the Board of Education. I delivered them to Mr. Poe's office and the Board members were called in-

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dividually on the same afternoon and told they could come by and pick up a copy if they wanted to come get them in a hurry. Dr. Self was telling what happened next.

【499】 Court: Let's go on. I've been wondering about this all along.

A. To complete the picture, I believe Mr. Watkins did go by and pick up his copy. Mrs. Maulden instructed Mrs. Gattis to have hers mailed to her and the other Board members received their copy by courier the following day.

Q. So no later than April 24 every Board member should have had their copy, is this correct? A. That is my understanding.

Q. Dr. Self, upon receiving the order did you hold any staff meetings with reference to reviewing the order? A. Yes, we did. We met the following morning.

Q. Did you distribute copies to members of your staff? A. I did.

Q. Now, did you have occasion prior to preparing the so-called Self Plan to confer with the attorneys for the Board of Education? A. On several occasions, yes.

Q. And at that time the various aspects of the order were reviewed with you, were they not? A. Yes.

Q. And based on this, our recommendations, recommendations of your staff and other sources of information, you began the preparation of the Self Plan, is this correct? A. That's correct.

【500】 Q. Was very much time spent in preparation of this plan? A. Quite a bit, yes.

Q. Was any consideration given to pairing? A. Yes.

Q. Was any consideration given to establishing a feeder system? A. Yes.

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Q. Was any consideration given to busing? A. Yes.

Q. Would it be fair to say that consideration was given to all the alternatives suggested by the Court? A. I think we considered all the alternatives.

Q. Were there other alternatives that you considered? A. We, at one point in our thinking, were talking about exchange programs of both students and teachers. I don't believe you have mentioned that. We considered the possibility of alteration of attendance zones in such a way as to accomplish more integration.

Q. Now, the plan that you finally submitted to the Board of Education, was this proposed by you and the staff as a final plan? A. It was proposed as a tentative plan and was so marked. It was intended to generate discussion among staff members and Board members.

Q. In other words, this was to get conversation going in various areas of the plan, is this correct? [501] A. That's correct.

Q. Dr. Self, with reference to the proposed plan, I understand that it was submitted to the Board of Education. A. Yes.

Q. Would you describe the circumstances under which it was submitted? A. Copies of the plan were given to the Board for study. A press conference was held prior to the meeting of the Board of Education to brief them so that they might have an opportunity to more thoroughly digest the information and perhaps do a good job of reporting. We met. The Board heard the staff presentation. They asked questions for clarification and agreed at that point to take it under advisement and come back later and discuss it.

Q. Was this a public hearing? A. It was.

Q. Were television cameras present? A. No, they were

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not although we did meet at WTVI. I beg your pardon, the commercial cameras were present, the WTVI cameras. This was not a school televised meeting.

Q. Dr. Self, could you tell us the occasions on which the staff and/or the School Board met to consider the Court order of April 23? A. I have a chronology of the meetings that were held. Is it your intention that I review these dates?

【502】 Q. Yes, if you would. Just tell us the meeting date and if you recall, what took place on that date. A. As I have said previously, on April 24 we held our first meeting of the executive staff to discuss the plan. On April 28 we met with the elementary principals, distributed copies of the plan and interpreted the plan, solicited their opinions and reactions. There was on that same date a meeting of the Board of Education at which time the Board directed the staff to begin preparation of the plan. On April 29 the executive staff set to work. We considered the results of the principals' meetings. We began to develop the format of the plan. We followed with meetings with the secondary principals, paralleled the meetings that we had with the elementary principals earlier. There was on April 29 a meeting of the Board of Education and the professional organizations study group representatives. This was just prior . . .

Court: What professional organizations are you talking about?

A. Your Honor, the professional organizations study group is a committee of the Presidents of the professional organizations.

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Court: What professional organizations are you talking about?

A. The NCEA, the NCHA, the Classroom Teachers Association, and I believe it's called the Mecklenburg Classroom Teachers Association. This meeting was held just prior to an area [503] meeting of the Board of Education.

Court: Where was that?

A. Garinger High School. The executive staff continued to work on the plan, meeting again on May 1. On that same, May 1, there was a meeting of staff members, namely, Self and Anderson with the same representatives of the professional organization. The primary purpose of this meeting was to discuss faculty integration and how it might be implemented. This was held at Dilworth School, a site which we frequently choose for meetings because of its central location. On that same date, May 1, we met again with elementary principals to follow up the first meeting that we had with them. We met on May 2 to continue our work on the plan. It was on this date that I spoke to the faculties of the various schools and tried to share with them the problem we were facing. I asked them to meet as a faculty and to select one member of their faculty to follow back to the executive staff their opinions and their concerns. That same date there was a meeting of the Board of Education and the so-called Harris School Study Committee. On May 3, which was a Saturday, we manned our telephones at the central office to receive the comments from teachers who had viewed the telecast on the previous day.

Court: What telecast was that?

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A. The one where I spoke to the faculty. We asked the faculties to meet in schools and I used the channel WTVI to speak to [504] them about what techniques we might employ to achieve faculty desegregation. We continued to work on May 4 and on May 5 the directors and coordinators of the school system, which I called our second line of people, began to consider the problem and what their contribution might be in terms of helping to resolve it. On May 8 I held a general staff meeting of all directors and coordinators and principals to interpret the developing staff plan to them and on that evening we met with the Board of Education to present the staff plan. I believe that May 12 was the meeting between the Board of Education and representatives of the same professional organizations. This meeting was held at Dilworth. On May 13 there was a meeting of the Board of Education and this was a televised Board meeting using the educational television channel. I recorded that on May 19 the Board held its work session on the staff plan at the education center. On May 15 we met as an executive staff to consider the reactions of the Board of Education to our staff plan and see what alterations or amendments were called for. We continued to meet, this time on May 20 and on May 21 the Board of Education met to adopt the plan of desegregation which is presented to the Court.

Q. Dr. Self, do you have any estimate as to how many people were involved in the preparation of the plan? A. In terms of what I would call making heavy contributions, the [505] executive staff did the prime work. Beyond that directors and coordinators were involved particularly as it concerns faculty desegregation, as were all the principals in the school system.

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Q. Would it be fair to say that the proposal that you came forward with was not lightly made? A. It certainly was not.

Q. Dr. Self, were you given any detailed rules or regulations under which you were to formulate your plan? A. No, I wasn't, Mr. Waggoner. I thought our charge was a rather broad and general one. I took it that we had the restraint of attempting to comply to the Court order and at the same time to attempt to prepare a plan with which the professional family could live and at the same time prepare a plan with which the community as a whole could live.

Q. Dr. Self, what is your opinion with reference to the accomplishment on faculty desegregation as of the present time under the plan? A. Please state your question again.

Q. What has the plan of desegregation accomplished at the present time with reference to faculty desegregation? A. According to a report presented to me this morning by Mr. Anderson, Assistant Superintendent for Personnel, there are 66 teachers who have volunteered. Twenty-eight of these are at the elementary level; twenty of the twenty-eight are black [506] and eight are white. At the junior high school level—this would include the Learning Academy—there are twenty-five volunteers; fifteen are black and ten are white. At the senior high school level there are thirteen volunteers; three are black and ten are white. The total then is thirty-eight black and twenty-eight white and the grand total is sixty-six.

Court: Are these all teaching positions?

A. These are all teaching positions, Your Honor.

Court: This is the final report?

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A. This is the report as of this date. We are continuing to get some of the blue assignment sheets in from time to time.

Court: What was the significance of Sunday the 15th of June in this connection?

A. Sunday the 15th of June is the terminal date for pupil request of transfers. There is no terminal date to accept a teacher request.

Court: I'm sorry, I'd forgotten what that date referred to.

Q. Dr. Self, with respect to newly employed persons, has there been change in the report we filed with the Court in which we indicated that seventy-six newly employed teachers would be assigned across racial lines? Has there been any change in this? A. It's still our plan to use newly employed teachers wherever [507] possible to effect faculty integration. That seventy-six, of course, can change from one day to another and hopefully we can increase it.

Q. Is the staff prepared to make assignment of non-voluntary personnel?

Mr. Chambers: I object to that unless he can show they have authorization from the School Board to make such assignments.

Court: The testimony is that the plan under which it has been operating for four years, all teachers are employed by the Board and are assigned wherever the Board says. Is there any testimony that that's been changed?

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Mr. Waggoner: If the Court please, I'm simply asking him if his staff is prepared to make a recommendation on this.

Court: Objection overruled. You can ask him about the authorization later.

A. I am prepared to share some feelings with the Court in terms of what effect the volunteers and newly assigned teachers will have on the overall faculty integration picture. May I use a chart to do that?

Q. Certainly. Do you have additional copies of that, Dr. Self? A. Yes.

Mr. Waggoner: May I have this identified as Defendants' [508] Exhibit #1.

A. The chart which has been passed out is one that is familiar to the Court.

Q. Dr. Self, you're referring to Defendants' Exhibit #1?

Court: I'm sorry. This is a chart that I have spent some hours trying to read but have never become familiar with it. Have you got a better way to tell me what you've got in mind?

A. I think so, if you can follow with me down the righthand column. I share your frustration at trying to interpret the figures. They are rather difficult. Down the righthand column under the heading of Professional Staff we have accumulated data in terms of faculty desegregation. Beneath those words are the year 1968 which reveals that we had 98 of our 112 schools with some degree of faculty integration, some degree meaning one or more. Those 98

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was really made up of sixteen predominantly Negro schools and 82 predominantly white schools.

Court: Are you talking now about the way it's been up through last month?

A. That's right and I was going to try to show you how it would be updated.

Court: You've got 900 black teachers and 2800 white teachers in the system? Maybe it's 2600 white teachers and 900 black, is that about right?

【509】 A. The total is the total at the bottom of the page, 505 and 2783; grand total of 3288. The key figure is in the middle of the page where you see the 131 and the 208. Can we dwell on that? That 131 represented 131 white teachers that were in predominantly Negro schools. The 208 are 208 Negro teachers in predominantly white schools. With the assignment of our volunteers and of our new people, this number that Mr. Waggoner read out a moment ago, that 131 white teachers will grow to 170 white teachers. The 208 Negro teachers will become 292. Those figures are penciled in to the right.

Mr. Chambers: Your Honor, I object.

Court: You've got 208 black teachers teaching in white schools. Where do you get the other 56?

A. Newly employed personnel, Your Honor.

Mr. Chambers: Your Honor, I object to this testimony because it's more confusion than factual. I assume this 208 means he is going to have the same 208 Negro teachers in the school next year.

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Court: Is that part of your assumption?

A. There are 13 of those Negro teachers who are no longer in the position. We have to make up that amount of integration that we had won before we assign from this point on. There are 24 of those 131 white teachers who are no longer with us and we have to make up that loss before we assign additional teachers.

Court: I have never followed the theory of this page. [510] Can you tell me in words what it is you've got in mind? This page doesn't confuse me, it just doesn't enlighten me at all or darken me at all because of the way it's made up. I'll have to get you to tell me what you've got in mind.

A. Well, Your Honor, there were fourteen schools last year that did not experience any degree of faculty integration. As I recall it, these were all black schools. If we are going to have faculty integration in these schools, we must place white teachers in vacancies which exist on those school faculties. There are vacancies in five of those all black schools now. We intend to fill them with white teachers. To move in faculty integration in the other nine schools, we will have to take teachers from the faculty roll and move them somewhere else before we can assign white teachers there. The staff is interpreting the Board's plan on faculty integration, that part of which says that if voluntary efforts fail that the Board will use its power to assign teachers, to mean that we can move staff members from these all Negro schools.

Court: Aren't all of the teachers in the system subject to assignment wherever you ask them to serve unless they want to quit?

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A. Yes.

Court: Do you create a vacancy by just transferring a teacher from one school to another?

【511】 A. If there are no vacancies, particularly in a school with a diminishing enrollment, then the only way that you can have a vacancy into which you can move a white teacher is by transferring the Negro teacher out.

Court: What do you have in mind other than filling vacancies?

A. Moving some teachers from the all black schools to create vacancies so we can effect faculty integration. Beyond that, I think we would go to those schools which have minimal faculty integration and attempt to increase it.

Court: Anything else?

Mr. Waggoner: Yes, sir.

Q. Dr. Self, is it true that of the approximately eight or nine hundred black teachers in the Charlotte-Mecklenburg system that 292 of those teachers will be in predominantly white schools? A. That's our projection.

Q. That is purely on the voluntary and newly assigned teacher basis. A. That's right.

Q. So this is nearly a third of the black teachers in the community that will be in these situations? A. That's correct.

Q. Now, do I understand the lower figures to indicate that 95% of all teachers will be teaching in integrated schools next 【512】 year insofar as this part of the plan

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goes? A. Assuming that you accept one teacher of an opposite race as evidence of integration.

Court: How do you view that particular proposition. If you've got one white teacher in a school with fifty black teachers is that an integrated faculty? And, if so, what benefits accrue to the students from having that arrangement?

A. Your Honor, it's integrated in terms of statistical accounting. In terms of it being a desirable situation, I would not judge it to be so.

Court: What would deem to be a desirable situation in this county?

A. I would say that there ought to be enough members of that minority race on the faculty so they can produce reinforcement and support for one another. That would mean a considerable number.

Court: Do you have the same essential feeling about the role of the ~~black~~ teacher who is assigned to a white school with fifteen or forty white faculty members?

A. I do.

Court: If the plan were designed so that you reorganized the faculty of the schools so there was a thorough going desegregation of the faculty, wouldn't [513] the whole process be more acceptable to those teachers who participated in that?

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A. I think that this was the sentiment that the heads of the professional organizations did state.

Court: Will desegregation of faculties produce closer to an equality of educational calibre in all the schools that it would be if we carried on the way we are? Would it tend to equalize the educational opportunities as far as instruction is concerned?

A. I don't believe it would guarantee it.

Court: I didn't ask to guarantee it, what would be the tendency of it?

A. It would be the tendency, yes.

Court: All right, go ahead.

Q. Dr. Self, with reference to the Court's question about gerrymandering, are there any zones or school attendance districts known to you which were developed on racial lines to perpetuate segregation?

Mr. Chambers: Objection.

Court: Overruled.

A. I think our attendance lines reflect natural boundaries. There are in most instances natural boundaries between white and black neighborhoods. I think the net result of this has been to draw out attendance areas that produce, in some instances, all white schools and all black schools.

【514】 Q. Now, with reference to pupil desegregation, in the present desegregation as it pertains to pupils what do you expect to accomplish by the beginning of the school

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year September 1969? A. Our tabulation in terms of pupil assignment thus far indicates that 1816 pupils have requested change of assignment. Of this 1816 requests, 1484 are what I term regular assignments; 332 are majority to minority transfers.

Court: How many of the 332 are white children asking to go to black schools?

A. Two at the present time.

Q. Dr. Self, as I understand it, it would be impossible to construct and equip the new Metropolitan High School prior to the beginning of this school year. Do you have a target date in mind for the availability of the new facility? A. We had hoped the fall of next year, not this year but next year. I would anticipate some difficulty in meeting that schedule right at the moment.

Q. What effect do you expect the pupil plan to have on the all black schools that exist in this system? A. The only effect that I can see that it would have would be to slightly decrease the enrollment in some of the all black schools.

Q. Is this circumstance of having all black schools peculiar to the Charlotte-Mecklenburg School System?

Mr. Chambers: Objection.

[515] Court: Overruled. It's a well known fact but it won't hurt to prove it again.

A. No.

Q. Now, with reference to the varsity athletics prohibition of engaging in sports where you transfer to a new high school, what is the rationale for this rule? A. I think the previous testimony on this has been correct. It was

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actually an attempt to prevent pirating of star athletes from one school to another.

Q. Do you feel that this particular provision of the plan would act to the detriment of desegregation? A. I do not feel so. If it developed that it was proving to be a detriment, then I think it should be reviewed.

Court: Can you tell what the effect of it is when people don't apply that may be subject to the rule?

A. The only way that I can think of that you would be able to tell, Your Honor, would be that people who do not apply because of this rule would have a tendency to speak out.

Court: You assume they would.

A. Yes, sir.

Court: If you have only two requests from white students to transfer to black schools, whatever effect this athletic rule has is not one that is going to prohibit the freedom of choice for white students, is it?

【516】 A. That's right.

Court: Because they're not choosing to go to black schools anyhow.

A. That's right.

Court: So the only prohibiting effect that rule has, as a practical matter, is on black ninth graders, isn't it? . . . ninth and tenth graders.

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A. It would have a tendency to be more inhibitive to the students in eleventh or twelfth grade because this is where the student begins to make the varsity. He could participate on the other teams.

Court: If an athlete is required by this rule to choose between playing football and going to a school otherwise of his choice, the effect of the rule is to discourage him from exercising his theoretical freedom of choice, isn't it?

A. Yes, it would be.

Court: And it's only black people who would be deterred by this, isn't it?

A. According to the present facts, yes, sir.

Court: Are these facts substantially any different than they have been through the last four years?

A. No, they are not.

Court: You've never had more than a tiny handful of white students choosing to go to black schools, have [517] you?

A. That's right.

Court: How has that figure run through the years? Has it been two or three, a dozen or two?

A. I don't recall. I would agree it's been only a handful.

Court: Well, if it should develop that the restriction prevents the exercise of a constitutional right,

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do you think that the constitutional right or the orderliness of the athletic recruiting program is more important to the community?

A. I think the constitutional right is, of course, more important.

Court: Did you ever play football?

A. Yes, sir.

Court: If you had to lay out a year, would you have chosen to go to a school as a first year high school when you had a school you could go to and play freshman football?

A. That's been a long time ago, sir, I don't know.

Court: You don't think you would, do you?

A. No, sir.

Q. Dr. Self, this varsity athletic transfer rule, what was the basis for originally formulating it, what circumstance?

A. Well, it had to do with an attempt on the part of an aggressive coach to recruit athletes of known ability from other schools and it was a rule that was attempted to deter that [518] sort of practice.

Q. As an educator do you regard athletics as a major portion of the students education? A. Yes.

Court: You recommended striking that thing out of the plan in your first draft, didn't you?

A. Yes, sir.

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Court: You still think it ought not to be in there?

A. I think it's subject to some question and I think that we might come up with some provision for having our athletic director to review cases where someone is being penalized in this case.

Court: You still consider it a penalty, though, don't you?

A. Yes, sir.

Court: And you so said in the plan.

A. Are you referring to the staff plan, sir?

Court: Well, this plan says this penalty will be lifted if he goes back to the school he was told to go to originally, doesn't it?

A. Yes, sir.

Q. Dr. Self, you're familiar with the language of the Court in the order of April 23 in which it says one point on which the experts all agree and the statistics tend to bear them out is racial mix in which black students heavily predominate tends [519] to retard the progress of the whole group. Do you recall this statement? A. Yes, sir.

Q. Now, referring to the data submitted to the Court . . .

Court: There's another piece of that sentence.

Mr. Waggoner: All right, sir, I'll read the entire sentence: Whereas if students are mingled with a clear white majority, such as a 70-30 ratio, approximately the ratio of white to black students in Mecklenburg County, the better students can hold their

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pace, with substantial improvement for the poorer students.

Q. This is, as I understand it, the Court's language. Now, referring to the data submitted in connection with freedom of choice, do you have such a table? A. Are you referring to the statistics I just read out?

Q. No, sir. This is the preparation by Dr. Church consisting of three or four pages on the effects of a freedom of choice if it were abolished. A. Yes, I have that.

Court: Is that in the . . . ?

Mr. Waggoner: In the report of May 28, I believe, Your Honor.

Court: This is Exhibit 71 or 73, whatever it was, that Mr. Belk was identifying . . . 71. All right, I'm with you.

【520】 Q. Dr. Self, would you point out to the Court those schools which would tend to improve the ratio toward a 70 white-30 black population in the school.

Court: I haven't sustained many objections, but if you'll rephrase that so I can understand it, I would appreciate it.

Q. Will you point out those schools in which the black students heavily predominate to which a few whites would be returned? A. Well, to do this we would have to turn to the second page where the schools are actually listed. If I might just go across the top of the first line just to sort of get my own mind focused on the question, Mr. Waggoner. Albemarle Road Elementary School, which is indicated by the W as a predominantly white school—in the

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next two columns we see that there are 72 pupils attending Albemarle Road from outside of their school district. 70 of these are white and 2 are Negro. In the next two columns, we see that there are 19 white pupils, no Negroes, who are from that district but who are attending other schools in the school system. If you eliminated freedom of choice and if you returned all of these pupils to their original school, it would have the effect of taking those 70 white pupils who are attending outside of the district. It would also have the effect of sending from Albemarle Road the two Negro pupils and bring back no Negro pupils. So [521] that the net effect in terms of the minority race at Albemarle School would be the loss of 2 Negro pupils and that's the last column, minus 2N.

Q. With reference to Barringer School, what effect would abolishing freedom of choice have on this school? A. It would have the net effect of sending 19 white pupils back into Barringer School.

Q. Barringer is a school that is heavily predominantly black, is this correct? A. It is predominantly black.

Court: Is it a fair summary of all this data that if you eliminated freedom of choice you would return to mostly black schools some twelve or fourteen hundred white students and most of this would be in the north and west parts of town, most of it in low income areas?

A. That's true. The summary, Your Honor, is on the preceding page.

Court: I'm asking the question primarily with reference to the places where this would take place.

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Is it generally true that freedom of choice has tended to enable white people in low income areas to get out of black schools?

A. It has had that tendency.

Court: Such as in Amy James 216; Tryon Hills 89; Villa Heights 42; Piedmont 110; Hawthorne 144, and [522] so on.

A. Yes, sir.

Court: And York Road 190. Is this one of the problems that the Court called to the Board's attention in the previous opinion.

A. In that section, Your Honor, where you said that freedom of choice could be permitted if it did not have the effect of perpetuating segregation.

Q. Dr. Self, with reference to the beneficial effect or detrimental effect of the freedom of choice plan, has it had any substantial influence on creating a favorable educational condition for certain students?

Mr. Chambers: Objection.

Court: Overruled.

Q. Would you like the question restated? A. Please.

Q. With reference to the freedom of choice plan, from a sound educational standpoint, has it been beneficial or detrimental to retain it under the plan of desegregation?

Mr. Chambers: Objection.

Court: Well, you've got another element in there but I'll overrule it.

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A. I think it's been beneficial to retain it for reasons other than educational.

Court: You mean that people have raised less Cain about [523] the situation because it's been in there?

A. I think it's proved to be an outlet, pop-off valve, yes, sir. I think that there might be education reasons associated with the assignment of a small handful of a minority race in another school, but to generalize on that topic, I don't think I can.

Q. Well, in the vast majority of schools there is a small handful or no students of the other race effected under this, is that correct? A. That's correct.

Q. Dr. Self, the Court has been puzzled by the free transportation provision of the plan. Could you elaborate on how the plan actually operates? A. Well, the plan states that if they are majority to minority transfers the Board of Education will provide transportation. The details of the plan have yet to be worked out. The administration assumes that if there are three pupils who elect to go from West Charlotte to Harding High School that it's our responsibility to furnish them with transportation, the same manner as we furnish transportation to the student going from a section of the county to Independence High School.

Q. All right, now, with reference to school capacities, would you explain how the mechanics of how the plan works with reference to determining which students will be accepted under free transfer? [524] A. The plan calls for the acceptance of majority to minority requests at any school up to a number which exceeds the maximum capacity by 20%. These transfer requests are to receive considera-

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tion before any regular transfer requests receive consideration, so they are given priority.

Court: Suppose your school is already closed?

A. Then we would have to resort to a second or third choice if one were given and if second and third choices are not given, it's been our custom to communicate with the applicant and say the school is closed, would you care to select another one. This was the purpose of our publishing in the paper the names of the fifteen closed schools. We hoped to save some people some trouble in terms of applying for them.

Court: So those schools can be filled up already before any outside choices are made to go to those schools.

A. There are fifteen schools that are filled up already. By that we mean they are 20% over their capacity. There are two schools in which majority to minority requests would be effected. They are Ranson and Albemarle Road Junior High School. There were thirty requests to Ranson Junior High. 16 of the 30 requests listed a second choice so that we can accommodate them. 14 did not list a second choice and we would have to communicate with these parties and see if they would care to have another school. One request was made to [525] Albemarle Road Junior High School which is one of the 15 closed schools. They also had a second choice and we can grant their request to the second choice.

Court: So that freedom of choice means freedom of choice if they happen to have room over there under these rules.

Dr. William C. Self—for Defendant—Direct

A. Yes, sir, but it's a rather liberal interpretation or if they happen to have room.

Q. Dr. Self, do you feel that there is sufficient space in the white schools to accommodate the blacks who may request transfer?

Mr. Chambers: Objection.

Court: Objection overruled.

A. There is space, according to my previous statement, to accommodate all but fourteen of the majority to minority requests that I enumerated earlier. These may be accommodated in terms of second choices.

Court: Well, you're not going to get any more requests, are you?

Mr. Waggoner: No, sir.

Court: Do you expect any more?

A. No, sir.

Q. Dr. Self, what means of notice to students and parents was given with reference to the free transfer provision from majority to minority schools?

[526] Mr. Chambers: Objection, it's already in the record.

Court: What's in the record?

Mr. Chambers: The provisions or degree of notice the School Board gave to the parents. I call the Court's attention to the document filed with the Court on Monday, and we indicated at the time that we didn't have any objection to the document being introduced.

Court: Well, he may have something else in mind. Go ahead.

Dr. William C. Self—for Defendant—Direct

A. Notice was sent home with the children the last day of school and the notice had a letter which told of the assignment plan. One paragraph in the letter did state that free transportation would be furnished majority to minority transfers. Public notice was also given in the newspapers. These public notices were printed by the Board of Education as it had stated it would do in the plan.

Court: Is that the fine print ad that ran in the classified section?

A. Yes, sir.

Q. Dr. Self, was any prominence given in all notices with reference to the free transportation? A. If you mean was it set apart in bold type, yes. It was also set apart in bold type in the public notice but it was scarcely discernible.

【527】 Court: The headlines in the public advertisement I believe were about two-thirds of the size of a typewriter, weren't they?

Q. Dr. Self, do you believe the measures employed to get notice to these students and their parents were reasonable means to communicate?

Mr. Chambers: Objection.

Court: I guess that's a matter I'll have to decide.
Go ahead and answer the question.

A. Yes.

*
Court: Do you feel a fine print ad between the obituaries and classified ads is reasonably calculated to notify school children of anything, or are you

Dr. William C. Self—for Defendant—Direct

relying on the letter that was handed to them at school?

A. The letter would attract a good bit more attention, Your Honor. I think also that the attention surrounding this whole field and the news articles which have been written about it would attract more attention than the public notice.

Court: You're not including the published fine print advertisement in your feeling that a notice was reasonable, are you, as a part of it?

A. I think this was a satisfaction of a sort of a pseudolegal requirement that the Board felt it had to do.

Court: But as practically giving notice to a school [528] child, that printed notice in the paper wasn't worth much, was it?

A. It would be of much more value to the parent than the child.

Q. Dr. Self, have you had an opportunity to review Dr. Finger's proposed plan of desegregation of pupils? A. Very briefly.

Q. Did you find it to be substantially the same proposal he had made previously? A. It did seem to me to be a blending together of the three reports that were presented in earlier testimony.

Q. Did your office or your staff give consideration to redrawing some school attendance lines? A. Yes.

Q. And I assume that you rejected this idea, is that correct? A. At this time.

Dr. William C. Self—for Defendant—Direct

Q. For what reason? A. Well, the staff plan as it was proposed placed heavy emphasis on faculty desegregation. We had hoped to have a period of preparation of the community for further steps in pupil desegregation. So since the pupil desegregation major move was postponed, that particular type of intervention was not considered in the staff plan.

Court: When was it first postponed, was that at the first meeting?

A. As a part of the staff plan, sir.

【529】 Court: Well, did the first staff plan make a staff decision to postpone everything but faculty desegregation?

A. Yes, sir.

Court: Was that pursuant to instructions from the Board or members of the Board?

A. No, sir.

Court: Was that decision postponed or understood when you started to work on the plan?

A. It was an understanding that developed as we worked on it, Your Honor. There were two major reasons I think for it. One of them was the tremendous amount of work that would need to be accomplished, and the second was the tremendous need that was apparent at that time for preparing the community for such steps.

Dr. William C. Self—for Defendant—Direct

Court: You're saying, then, that sometime shortly after the first meeting of the School Board the 25, 26, 27 or 28 of April, shortly after that the staff stopped work on the details of any possible plan for pupil desegregation.

A. We laid heavy emphasis on the faculty desegregation.

Court: I was asking you about the pupils. Your plan was prepared for presentation about the first of May, wasn't it, and withheld for presentation until the 8th of May?

【530】 A. No, sir. It was almost a deadline job. We were coming off the press with it, I believe, about May 8.

Court: May 8 was the date of the Board meeting, wasn't it?

A. Yes, sir. We didn't finish it much before that date.

Court: And between the 23 of April and the 8 of May you had concentrated on the faculty desegregation question?

A. We had concentrated, our major emphasis was there. We had not overlooked student desegregation.

Court: And you had done no work on student desegregation plans since you reached that conclusion before firming up the May 8 plan, is that correct?

A. That's correct.

Colloquy

Mr. Waggoner: No further questions.

Mr. Gage: Your Honor, there are a few questions I'd like to ask for the same purpose as before either now or after cross examination.

Mr. Chambers: Objection.

Court: What do these questions relate to?

Mr. Gage: Concerning the allegations made about the Chairman of the School Board by Mrs. Betsy Kelly.

Court: Mrs. Kelly came to this hearing with a lawyer and she doesn't have one now.

Mr. Waggoner: Mrs. Kelly presented me with a note. [531] She would like to go on the stand as a witness. She has not released me as counsel and I will represent her to the best of my ability.

Mr. Chambers: Your Honor, I submit that this case is not involving a problem that counsel now proposes to go into. As the Court set forth at the beginning of the hearing, the question was whether or not a plan submitted by the Board complied with the Board's constitutional requirements. I understand now there's some question whether counsel wants to inquire whether some threat has been made against Dr. Self. I submit that has no relevance whatever to this matter now in controversy.

Mr. Gage: Your Honor, I'm puzzled that counsel for the plaintiff now wishes to limit the scope of the inquiry when he first broached the subject on cross examination of the Chairman on the witness stand and it was on his examination of Mrs. Betsy Kelly that all this came out. I believe that Mrs. Kelly has conferred with him. I believe Your Honor ought to strike all of this testimony out of the record if the scope of inquiry is to be now restricted.

Colloquy

Court: As I told you a while ago, I am not going to restrict the inquiry because we've been into it before. Mrs. Kelly, you may cross examine Dr. Hanes if you [532] want to recall him for that purpose and you may cross examine Dr. Self if you want to and if you now have a lawyer, which I thought twenty minutes ago you did not have, you may want to confer with him.

Mrs. Kelly: Do you want me to do it now?

Court: Do what, talk to Mr. Waggoner?

Mrs. Kelly: Yes.

Court: If you wish.

Mr. Waggoner: May we have a short recess, Your Honor?

Court: Take a ten minute recess.

SHORT RECESS

Court: Gentlemen, the Court yesterday was perhaps concentrating too much on what was being heard and not enough on the proportions of something that happened, I believe innocently, but it happened nevertheless. When your client is called by the opposite party and he gets through asking questions, the attorney who represents that client has a right to cross-examine his own client if he chooses to. This right does not extend to impeaching questions or suggestions. I overlooked this situation yesterday and I believe Mr. Waggoner overlooked it also and it did not come back to my attention until a moment ago when I interrupted the proceedings. Mr. Waggoner is in the position of having received confidences from two people who are in this [533] matter of impeachment on opposite

Colloquy

sides of the fuss and he has not been released by the School Board or by Mrs. Kelly and is in an impossible position. The Court has advised him on this subject to have nothing further to do with it by way of conducting the hearing or conferring with clients. The Court advises Mr. Gage that if his examination of the witness on the subject he is talking about is based upon information that came in any way from Mr. Waggoner, he must not ask questions based on that information. This is the reason I interrupted the conference between Mrs. Kelly and Mr. Waggoner a while ago because I thought for their mutual protection they ought to become separated immediately. A lawyer cannot have clients with interests which conflict and I am sorry I didn't see this when it first came up yesterday. This is probably not a matter of substance in the final conclusion of the case because, as I said a while ago, I expect to hear everything that may be pertinent and to make my decision on what I believe the facts to be. It is of importance to Mrs. Kelly and Mr. Waggoner that we get our amenities straightened out and proceed with some care from now on. She will be accorded the right to cross-examine Dr. Hanes, cross-examine Dr. Self if she chooses and to testify further or offer further [534] evidence if she wishes to after they conclude their testimony. Do the attorneys think that this now leaves us in a position to proceed without any further confusion?

Mr. Gage: *Your Honor, I'd like to say that the information on which I now propose to proceed came to me directly from Dr. Self and Mr. Poe. I have not been briefed by Mr. Waggoner.

Dr. William C. Self—for Defendant—Cross

Cross-Examination by Mr. Gage:

Q. Dr. Self, would you state to the Court, please, sir, whether your job has ever been threatened by Mr. Poe.
A. It has not. I think, as Dr. Watkins testified this morning, this is a time of tension. We have some very traumatic questions before the Board of Education and the staff. It is to be expected that the questions under consideration will produce differences of opinion and there have been differences of opinion among Board members, among the staff and among the Board and staff. At no time in my relationship with Mr. Poe have any differences of opinion which we have had reached the point where either of us felt that they must be resolved by my leaving the job.

Mr. Gage: Thank you, that's all.

Court: Mrs. Kelly, do you want to ask him some questions now?

【535】Mrs. Kelly: I would like to cross examine Dr. Hanes.

Court: Do you want to ask Dr. Self any questions?

Mrs. Kelly: No.

Court: If you're going to be asking questions, come up and sit at one of these tables so you can be heard a little better. Anybody else want to ask Dr. Self any more questions?

Cross Examination by Mr. Chambers:

Q. Dr. Self, you assisted in the preparation of the plan that was submitted to the Board on May 8, 1969? A. I did.

Q. The proposal submitted by the staff provided for the complete desegregation of teachers effective 1969-70. A. It did.

Dr. William C. Self—for Defendant—Cross

Q. In your professional opinion, Dr. Self, would it be feasible for this school system to completely desegregate the staff beginning September 1969? A. Yes, but I would qualify it by saying it would be extremely difficult at this point.

Q. It would, however, be feasible? A. Yes.

Q. Dr. Self, in answer to some questions from the Court you intimated that the staff early stopped consideration of combining any school districts, pairing of any schools or changing [536] or establishing a feeder system. Did you hear the testimony of one of the Board members yesterday—Mr. Poe, I believe it was—that the staff understood from the first Board meeting that the Board did not want to consider any changing in the student assignment which would require busing? A. I heard the testimony.

Q. Will you tell the Court, Dr. Self, whether when you began the preparation of your plan you proceeded with this understanding? A. Yes.

Q. Now, you testified about extensive consideration that the staff gave in the preparation of the plan it presented to the Board. A. Yes.

Q. Despite your extensive study, the Board saw fit to modify your plan and, in fact, water it down considerably. A. Acting within their authority, yes.

Q. So all of the study that you made with respect to teachers was changed by the Board. A. Again within their authority, yes.

Q. Did they spend half as much time as the staff in the staff's preparation of the plan? A. I do not know.

Q. From the time that you spent in the preparation of that plan, did you spend comparable time as Secretary to the Board with the Board in its consideration of the plan? [537] A. No.

Dr. William C. Self—for Defendant—Cross

Q. Did you hear Dr. Finger's testimony? A. Yes.

Q. And I think that you testified earlier that you had had a chance to glance at the proposal he submitted. A. Very briefly, yes.

Q. In your study or consideration of the Court's order, did you have a chance to consider some desegregation efforts in other communities? A. Not extensively. Some, but not extensively.

Q. Did you have a chance to consider some proposals dealing with pairing of schools? A. I did not read any information of this sort. I know generally about the pairing technique.

Q. Do you also know generally about consolidation of school districts? A. Yes.

Q. Do you also know generally about feeder systems? A. Yes.

Q. Are you familiar with the boundary lines for the Eastover Elementary School. A. Yes.

Q. Are you familiar with the boundary lines for Chantilly? A. Yes.

Q. Cotswald? A. Yes.

Q. Is it Oakhurst? A. Oakhurst, yes.

Q. Approximately how far would Elizabeth be from Chantilly? A. In the neighborhood of two, two and a half miles.

Q. It would be feasible, would it not, Dr. Self, to combine these two school districts effective September 1969? A. From an administrative point of view it could be done. I think that a great deal of discussion has to go on regarding the use of transportation since I think transportation would have to be employed to do this.

Q. Now, if the districts of Eastover, Billingsville, Oakhurst and Cotswald were combined, approximately what

Dr. William C. Self—for Defendant—Cross

would be the mileage in diameter of those combined districts? A. I would estimate four to four and a half miles.

Q. Is it true that Eastover district presently has a diameter running north and south of approximately three and a half miles? A. I think that's a close estimate. It's elongated.

Q. Do you provide bus transportation in that district? A. No, we do not.

Q. Now, your combined district of Chantilly and Elizabeth would be about two miles. Would it be necessary to provide bus transportation within that district if they were combined? A. I think it would if you think in terms of the extremes of the district.

Q. Now, would it be feasible effective September 1969 to combine [539] the districts of Eastover, Billingsville, Cotswald and Oakhurst? A. Again, from an administrative point of view it could be accomplished. From the amount of community preparation standpoint, there is a tremendous amount of that that has yet to be done.

Q. Did you hear Dr. Finger's testimony about combining Marie G. Davis with Sedgefield and Collingswood? A. Yes.

Q. In your professional opinion would it be feasible to combine these districts effective September 1969? A. I would answer in the same way.

Q. You also heard his testimony about combining Bruns Avenue, Enderly Park and Ashley Park. A. Yes.

Q. Would your answer be the same with respect to doing that effective September 1969? A. I believe it would.

Q. You also heard his testimony about Thomasboro and Lakeview. A. Yes.

Q. Would your answer be the same with respect to combining those two school districts effective September, 1969?

Dr. William C. Self—for Defendant—Cross

A. It would be.

Q. You also heard his testimony about combining Tryon Hills and Hidden Valley. [540] A. Yes.

Q. Would your answer be the same with respect to combining those two school districts effective September 1969? A. Yes.

Q. Did you hear his testimony about the school districts of Plaza Road, Highland, Villa Heights, Alexander Street, Midwood, Shamrock Gardens and Merry Oaks? A. Yes, I did.

Q. Would you agree that the diameter, if these districts were combined, would be approximately two miles? A. I believe that would be a little bit on the slight side. I'm not sure.

Q. Would your answer be the same with respect to combining those school districts effective September 1969? A. That was not as clearcut as some of the others.

Q. It's not as clearcut? A. Yes.

Q. Did you hear his testimony about Wilmore, Dilworth and Myers Park? A. I did.

Q. Would it be administratively feasible to combine these districts effective September 1969? A. Administrative details could be accomplished.

Q. Now, did you look at the proposal with respect to establishing a feeder system for desegregating the junior high schools [541] and the senior high schools? A. Yes.

Q. Would it be administratively feasible to effect that proposal in your professional opinion effective September 1969? A. There are some points, I think, that would need clarification. I wasn't able to detect where Dr. Finger was proposing to send the children of the closed out schools, Fairview into McClintock, for example. I'm confused over that part.

Dr. William C. Self—for Defendant—Cross

Q. Otherwise, assuming that we found a place to put those children, would it be administratively feasible to implement the proposal with respect to the junior high schools and senior high schools? A. Yes.

Q. Now, is it true the Board presently proposes to close Bethune, Isabella Wyche and Zeb Vance Schools in September 1969? A. No. It is true that these schools that you mentioned are marked for abandonment but the final decision on that has not been made yet and before that can be done, the matter of whether or not they would be replaced by a school in locale or whether these students would be transported to outlying schools has yet to be made.

Q. Well, now, there was some consideration given to building a school to replace these schools when they were closed. A. That's correct.

Q. And I don't believe that the Board has yet decided where to [542] place this school to replace these three schools. A. That's correct.

Q. Now, would the schools in the adjacent districts be able to accommodate the students if these schools were closed effective September 1969? A. I am not certain of my facts but I doubt it.

Q. Well, we don't know the figures or the capacities of the schools in the adjacent districts? A. I could look that up, yes, sir.

Q. Do you have the figures with you? A. (No answer given.)

Q. Do you have a copy of Plaintiff's Exhibit #5? A. If I do, I don't know the number of it, Mr. Chambers.

Q. This is a copy of the proposal submitted by the plaintiff. A. Yes.

Q. Would you look at Page 2 of that proposal? In the

Dr. William C. Self—for Defendant—Cross

last paragraph would you look at the sentence beginning on the last line.

Court: What are we looking at now?

Mr. Chambers: This is the plan submitted by the plaintiffs.

Q. Would you read whether this plan requires the closing of those three schools we were talking about? A. The sentence begins: The Schools are Bethune, Wyche, Zeb Vance and Fairview. There are approximately 1,000 students [543] involved. The plan is not contingent upon the closing of these schools but if they are not closed, some modification in the plan will be required.

Q. It would be possible, therefore, to implement this plan and maintain those schools even next year? A. If I read this correctly, yes.

Court: Dr. Self, I have some recollection of hearing you or reading about you telling the Second Ward students to put in a request to go somewhere else next year. Where are the high schools with room for those 1,100 or so students? Where is it contemplated they'd go?

A. Your Honor, that was Dr. Hanes, I believe, that spoke to the Second Ward students. The high schools, though, would be those that surround the Second Ward district, they being Harding, Myers Park, Garinger and West Charlotte.

Court: Well is the Second Ward building substantially more decrepit now than it was sixty days ago? I just wondered.

Dr. William C. Self—for Defendant—Cross

A. No, sir.

Court: Is it the intention of the Board to close that school regardless of whether Metropolitan is built or not?

A. As I understand the intention of the Board, it is to establish a specialized school on that site.

【544】 Court: I'm asking about the operation of Second Ward School in 1969-70. The inference from the urging of students to go somewhere else and this was the last graduating class was there would be no school there next year. Has that been decided?

A. Not fully, sir.

Mr. Chambers: I have nothing further.

Mr. Waggoner: I have nothing further, Your Honor.

**A Tentative Plan for the Integration of the
Charlotte-Mecklenburg Schools**

*For Discussion Purposes
Self Plan*

Introduction

In accordance with the educational philosophy adopted by the Board of Education on December 18, 1968, it is the belief of the Board that the democratic way of life contributes the most benefit and happiness to members of society and that the school, as an agency of society, should be dedicated to the development, improvement, and preservation of democratic ideals. It is the feeling of the Board that all individuals should be given an equal opportunity to develop to the greatest possible extent their capacities for happy, useful, successful lives.

We feel that all individuals regardless of their abilities, past experiences, race, place of residence, social or economic status should have the right:

1. To share the skills, values, and knowledge of the human race.
2. To develop initiative and the ability to weigh facts, make judgments, and act cooperatively.
3. To attain a reasonable standard of living.

Note: The Board of Education is engaged in the process of developing a plan to comply with the District Court order of April 23, 1969. It should be emphasized that the statements made in this document are not final and should be regarded as such.

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4. To enjoy the widest share of freedom compatible with the equal freedoms of other people.

The schools have been recognized as the workshops of democracy. For generations the basic principles of American life have been introduced through the schools. By the effective use of the democratic processes, we believe that the complete integration of the Charlotte-Mecklenburg Schools can become a reality.

We are convinced that integration has provided and will continue to provide a more complete, realistic education for all individuals. It is our intent to present a reasonable plan for integration, which is designed to maintain and improve the quality of education in the Charlotte-Mecklenburg Schools.

As indicated in the District Court order of April 23, 1969, the Board of Education has "achieved a degree and volume of desegregation of schools apparently unsurpassed in these parts, and has exceeded the performance of any school board whose actions have been reviewed in appellate court decisions. The Charlotte-Mecklenburg Schools in many respects are models for others." In this order the Court directed that the Board "submit by May 15, 1969, a plan for the active and complete desegregation of teachers in the Charlotte-Mecklenburg school system, to be effective with the 1969-70 school year. Such plan could approach substantial equality of teaching in all schools by seeking to apportion teachers to each school on substantially the same ratio (about three to one) as the ratio of white teachers and black teachers in the system at large." The Court further directed the Board to "submit by May 15, 1969, a

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plan and a time table for the active desegregation of the pupils, to be predominantly effective in the fall of 1969 and to be completed by the fall of 1970."

In order to implement the Court order, we are prepared to take significant steps in achieving complete faculty integration beginning with the 1969-70 school year. In so doing, however, we realize that support must be given to faculty members through an intensive in-service education program. We intend to revise the present pupil assignment plan for the 1969-70 school year in order to promote further integration of pupils. It should be recognized that significant moves in pupil integration must be accompanied by a period of time during the 1969-70 school year in which the entire community will study and evaluate ways in which this might be accomplished. We are prepared to make some recommendations as alternatives for additional pupil integration to begin with the 1970-71 school year. Therefore, the objectives of the plan shall be as follows:

- To prepare the school system for complete integration.
- To achieve complete faculty integration.
- To revise the present pupil assignment plan.
- To prepare the community for additional pupil integration.
- To present some alternative plans for pupil integration.

Preparation of the School System

Much careful planning must be done to be certain that additional staff and pupil integration is accomplished with a minimum of disruption. The main thrust of this planning will call for significantly greater attention to the student's

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individual needs and will require sustained and creative effort on the part of educators as they seek to cope with this problem. The planning must also deal with the employment of additional staff, the provision of a much broader range of curricular offerings, and the production of learning materials to reach pupils of varying levels of educational maturity.

In seeking to improve their own effectiveness, educators must gain a better understanding of pupils of both races. They must better understand individualized learning approaches and gain an appreciation of personal values and feelings. To accomplish these things during the 1969-70 school year, the staff must have time to plan adequately, especially for activities involving other staff members. Teachers must also have time to evaluate the effectiveness of newer teaching techniques. To accomplish the above:

- a. Teachers who are transferred will be offered a two weeks summer workshop. Those who participate will receive a stipend of \$100 per week. The cost of such a program is estimated as \$200,000. An extensive effort will be made to underwrite the cost with funds from federal or state sources. If this attempt is unsuccessful, the project will be supported by local funds.
- b. The Board of Education will renew the request for curriculum planning time for teachers which was approved by the Board of Education on October 8, 1968. The original plan which provided for planning time twice a month will be amended to provide for dismissal of pupils at approximately 1:00 p.m. one day

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per week. If necessary, the Board will petition the legislative delegation for emergency enabling legislation.

- c. The in-service education department will be assigned a sum of \$10,000 for the employment of substitute teachers. The substitutes will be used to free experienced and highly qualified staff members for a period of time so that they may give added support to their fellow teachers through in-service workshops.

Other approaches to educational improvement involve staffing, curriculum, and supplies and materials. To facilitate improvement in these areas, supplementary support will be assured through the use of a special formula as follows:

Number of pupils in system

two years or more below times \$100 = Supplementary
C-M median on paragraph allocation
meaning

Approximately 13 per cent of the pupils in the system have scores which are two years or more below the Charlotte-Mecklenburg median on paragraph meaning. In order to bring the expenditure for these pupils up to the national average per pupil expenditure will require an additional \$100 per pupil. The total expenditure will be approximately \$1,100,000. A small percentage of this amount will be used to employ support staff not assigned to a specific school, and the remainder will be apportioned among the schools on the basis of the percentage of qualifying pupils enrolled in each school. The principal and his teachers will

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be asked to submit a plan outlining how the allocation is to be spent.

Faculty Integration

The integration of all Charlotte-Mecklenburg school faculties is a highly complex task in which the system has already had a great deal of positive experience. The degree of integration within respective schools has varied, but all schools have had some experience. In order to achieve an approximate three to one white to black racial balance in all grades and departments insofar as possible will require the cooperative effort of all teachers and administrators throughout the system. Based upon the experience of the past and the acceptance of professional responsibility by the members of our staff, we feel that complete faculty integration can be accomplished.

The school system will actively seek those teachers who have a high degree of motivation and are interested in volunteering for service to help in achieving this objective. Since the future will require a broad base of experience for all teachers, it is felt that most teachers will wish to become involved for a reasonable period of time in a variety of teaching opportunities.

The elementary, junior high, and senior high schools will be grouped geographically into clusters of schools in order to expedite the reassignment of teachers on the present staff for the 1969-70 school year. Such an arrangement will create smaller units within which there can be more cooperative effort and greater convenience of travel to those being reassigned.

The procedure for reassigning the present teaching staff will be as follows:

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1. Each principal will be provided a professional staff allotment for his school.
2. On the basis of this allotment, each principal will determine a table of organization for the 1969-70 school year.
3. Each principal will retain all teachers on his present staff who will have reached their sixtieth birthday by July 1, 1969, and who wish to remain in that school.
4. Each principal will retain all teachers on his present staff who are members of the black race in that school provided this number does not exceed the approximate desired ratio.
5. Each principal may retain on his staff such other teachers as he may believe to be absolutely essential to the continued efficient operation of the educational program in that school. The principal is urged to limit the number of teachers retained in #5 to a minimum. The total number retained in #3 and #5 may not exceed 25% of the total professional allotment.
6. Each principal will determine the number of volunteers on his present staff who wish to be reassigned for the purpose of helping to create a racial balance in all schools.
7. The principal of each predominantly black staff will determine the number of vacant positions in his school by reason of resignation, voluntary reassignment, or growth in pupil enrollment. He will then

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determine the number of remaining teachers who must be reassigned in order to create the proper racial balance. The teachers to be reassigned will be determined by the principal and his staff using a procedure that they feel will be most effective for their particular school. This procedure may recognize factors such as seniority, travel, etc.; or the teachers to be reassigned may be chosen by random selection.

8. The principal of each predominantly white staff will determine the number of vacant positions in his school by reason of resignation, voluntary reassignment, or growth in pupil enrollment.
9. Volunteers from both races will be the first teachers placed in vacancies. Consideration will be given to allow teachers to move with co-workers wherever possible.
10. Black teachers who have been declared eligible for reassignment will be placed in vacancies in each predominantly white staff created in #8 above.
11. Those black teachers whose teaching assignment does not match vacancies created in #8 above will be assigned to each predominantly white faculty to provide the total proper number of black teachers on the school staff. White teachers will be reassigned to match the teaching assignment of the incoming black teachers. If more than one white teacher holds such assignment, the teachers to be reassigned will be determined by the principal and his staff using a procedure that they feel will be most effective for

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their particular school. This procedure may recognize factors such as seniority, travel, etc.; or the teachers to be reassigned may be chosen by random selection.

12. All other vacancies will be filled by newly employed teachers.
13. All personnel to be reassigned will be notified in writing of their assignment for the school year 1969-70 prior to June 5, if possible.
14. A procedure will be established through which teachers may appeal their assignments.

Revision of Present Pupil Assignment Plan

At the present time, pupils are assigned to the various schools in the system under the provisions of the *Charlotte-Mecklenburg Schools Pupil Assignment Guidelines* officially adopted on June 13, 1967. The 1967 plan is based upon geographic zones surrounding each school. It permits freedom of transfer within the limits of available space.

It is the intention of the Board to revise the present pupil assignment plan as follows: (A copy of the revised plan is attached.)

A. "Attendance Areas," Item 1, Page 1

Eliminate the phrase "with the temporary exceptions hereinafter noted under the article entitled 'Exceptions'."

B. "Free Choice of Transfer," Item 4, Page 2

Alter the section to read as follows:

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"The right to exercise free choice of transfer is limited to any pupil who requests transfer out of a school where his race is in the majority, and to any school where his race is in the minority. Free transportation will be provided to any pupil who exercises and is granted a transfer under these conditions."

- C. "Transfers Limited in Case of New Schools," Item 5, Page 3

Eliminate this section.

- D. "Varsity Athletics," Item 6, Page 3

This section needs to be reviewed thoroughly (Eliminate, if possible).

- E. "School Capacity to Be Determined," Item 7, Page 4

Eliminate this section.

- F. "Transportation," Item 8, Page 4

Add the following after the first sentence:

"The only exception to this provision will be that for pupils who have exercised free choice of transfer as outlined in Item 4 (Revised), free transportation will be provided."

- G. "Enrollment Continues for School Term," Item 9, Pages 4-5 *

Add the following after the third sentence:

"Rising 12th grade pupils for the school term 1969-70 may request to remain at the school to

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which they were assigned and attended for the school term 1968-69. For the school term 1970-71, all pupils shall be assigned to the school serving the area in which they reside. A free choice of transfer will be considered as outlined in Item 4 (Revised)."

- H. "Effective Date and Duration of Rules and Regulations," Item 12, Page 7

Change the first sentence as follows:

"These policies and guidelines shall control the assignment and reassignment of pupils for the forthcoming 1969-70 school term. . . ."

- I. In addition to the above revisions the Board of Education will reassign all students (except 12th graders) now attending a school outside their geographic area to the school serving that area.

Preparation of the Community

In recent years the schools have become the focal point of action in connection with many broad social issues and a number of problems facing the community. Some examples are as follows: Providing for national defense education, teaching health and safety education, offering driver education, providing food for hungry children, combating poverty, lessening unemployment problems, easing social and racial tensions, caring for the mentally and physically handicapped, resolving civil rights issues, etc. As the most visible institution of community life, the schools have had to undertake these responsibilities with very little assistance from the community. In considering additional pupil

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integration, it is imperative that the schools solicit the cooperative efforts of all, for the solution to this problem is complicated yet dependent upon finding answers to segregated housing, public transportation, employment practices, better financial support, a more tolerant attitude toward integration, and a real concern for all children.

In order to develop the pupil integration plans for the school year 1970-71 and succeeding years, the following procedures will be implemented immediately:

1. In assuming its leadership role, the Board of Education will solicit active help from all community groups. These groups will include the County Commissioners, City Council, Chamber of Commerce, news media, churches, civic clubs, PTA groups, real estate agencies, etc.
2. In order to involve the community, the Board will arrange to hold a number of public hearings at various locations throughout the county beginning at the earliest date possible. These meetings will be operated under strict guidelines in order to obtain the best thinking from every person or group who wishes to make a contribution. The guidelines for public hearings will be as follows:
 - a. The time and place will be announced publicly at least five days prior to each meeting.
 - b. Each individual who wishes to speak will make a written request to be heard to a designated person prior to the meeting.
 - c. The time for each individual speaker will be limited to five minutes except in the case of a group which will be allowed one spokesman who may speak for

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ten minutes. A timekeeper will be provided by the Board of Education. Each person will be allowed to speak only once.

- d. Each speaker will be asked to give his name and state whether he is speaking as an individual or in behalf of a group.
 - e. For the benefit of those who wish to speak and have not made a written request, they will be asked to come to the front and talk with a screening committee prior to the beginning of the meeting. If the request is legitimate, they will be given an opportunity to speak after the others have been heard provided there is sufficient time.
 - f. The speakers will be divided into proponents and opponents. Time will not be allowed for a rebuttal.
 - g. It will be stated at the beginning of the meeting that there will be no demonstrations, no applause, etc. If there is disruption during the meeting, the chairman may close the meeting at any time.
 - h. The Board members will not question individuals as they speak, but instead, will make notes, and after all have been heard, will ask questions.
 - i. The length of the meeting will not exceed 2½ hours.
 - j. These guidelines will be announced at the beginning of the meeting.
3. The Board will arrange to hold meetings with local school committees and with their help develop a plan for involvement of each local school community.

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4. The Board will call on such groups as the Chamber of Commerce, League of Women Voters, Junior League, and American Association of University Women to organize a committee or committees to receive calls from citizens who would like to make suggestions. These suggestions would then be organized and submitted to the Board of Education for study and action.
5. The Board will identify school systems such as Evanston, Illinois; Shaker Heights, Ohio; Berkeley, California; White Plains, New York; and Hartford, Connecticut that have in operation plans for integration of teachers and pupils and will arrange to visit and study these systems. It is highly recommended that other governmental, civic, and community leaders visit these places along with the Board.
6. The Board will request that individual schools develop innovative ways to bring about additional pupil integration. School principals, teachers, and school committees might work in integrated clusters or groups in geographic areas in order to find the most effective ways to integrate the schools in that particular cluster or group.

Some Alternative Plans for Pupil Integration

With positive action on the part of the community, the school system will be able to move in the direction of additional pupil integration. It should be recognized that there are no easy solutions to the problem and that the final outcome of any plan can not possibly be known in advance. Some of the alternative plans that have been used successfully in other communities that might be discussed and

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evaluated through the involvement of the local community are the following:

1. *Redrawing of present geographical attendance areas.* This plan would accomplish some additional pupil integration and would reduce overcrowded conditions that now prevail at certain schools.
2. *Providing student exchange programs.* Students would be temporarily assigned to another school for a specified period of time, not to exceed one semester.
3. *Pairing of certain schools.* Students in grades 1-3 would attend one school, and students in grades 4-6 would attend the other school.
4. *Clustering specific schools.* There would be open enrollment to any of the schools within a cluster in which the student is enrolled provided the approximate desired white-black ratio
5. *Utilizing the educational park concept.* Under this plan, students would be brought together from elementary school through high school. It would require extra large sites and adequate building space.
6. *Providing students with the opportunity to go to another school for a specific type of program.* This would be particularly suitable for secondary students whose interests, aptitudes, and needs have been highly defined. At the elementary level the plan could be adopted for reading and other specialized instruction.
7. *Transporting students to another school.* Under this plan students would be bussed to another school in

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order to obtain an approximate desired white-black ratio.

8. *Other alternatives.* Plans other than these might be developed for consideration.

In order to develop the most acceptable plan for further pupil integration, the Board of Education requests additional time for study and evaluation. A plan for pupil integration would be submitted to the court for its review on or before January 1, 1970. Elements of this plan may be tried out experimentally during the 1969-70 school year in order to gain practical experience. The approved plan will be put into effect beginning with the 1970-71 school year.

Summary

In summary, the Board of Education has made considerable progress in the integration of schools. In order to continue this positive approach and to carry out the Court order, the Board of Education will take the following action by the year indicated unless otherwise stated:

1969-70 school year

1. Achieve complete faculty integration.
2. Carry on an intensive in-service education program in order to assist teachers in their new assignments.
3. Provide staff, materials, and learning experiences to reach pupils of varying levels of educational maturity.
^{*}
4. Revise the present pupil assignment plan to promote further pupil integration.

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5. Involve the entire community in the study and evaluation of ways in which additional pupil integration may be accomplished.
6. Submit a plan to the Court on or before January 1, 1970, which will provide for increased pupil integration.

1970-71 school year

1. Put into effect a plan which will provide for increased pupil integration.
2. Continue a program of teacher assignment which will maintain the same approximate racial balance in each school as that existing in the total school system.
3. Continue to offer an in-service education program to assist teachers in their new assignments.
4. Continue to provide staff, materials, and learning experiences to reach pupils of varying levels of educational maturity.

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Pursuant to notice dated June 4, 1969, a hearing was held in Charlotte on June 16, 17 and 18, 1969, on various matters including (1) the motion of the individual defendants for dismissal; (2) the motion of the plaintiffs for contempt citations against the individual defendants; (3) the proposals offered by the defendants pursuant to the April 23, 1969 order as a plan for desegregating the Charlotte-Mecklenburg schools; and (4) the motion of the plaintiffs for an order restraining further school construction until the segregation issue has been satisfactorily resolved.

I.**THE MOTION OF THE SCHOOL BOARD MEMBERS TO DISMISS.**

The motion of the individual defendants, members of the school board, to dismiss was and is denied. This is a suit under the Civil Rights Act involving questions of equal protection of laws and racial discrimination and segregation in the public schools. The individual defendants are proper parties and their presence is appropriate and desirable.

II.**THE MOTION FOR A CONTEMPT CITATION.**

The motion of the plaintiffs that the individual defendants be found in contempt of the court is on this record denied. The board is badly divided and many of its recent decisions appear to be made by a five to four vote. Supreme Court judges now and then make five to four decisions. (Fortunately their votes in all major school segregation cases appear to have been unanimous.) The members of

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the board have had uncomplimentary things to say about each other and about the court, and many of them obviously disagree with the legality and propriety of the order of the court; but these latter sentiments may be regarded by the court as evidence of disagreement with rather than contempt for the court who is himself not far removed from active participation in the time-honored custom of criticizing a judge who has ruled against him. Moreover, on an issue of such significance, the amount of foot-dragging which has taken place, up to now at least, should not be considered as contempt of court.

III.

THE PLAN OF THE DEFENDANTS.

1. *The history of the plan.*—The order of this court directing a further plan for desegregation was entered April 23, 1969. Within hours, various of the defendants expressed sharp views pro and con. The board met on April 28, 1969, and for the first time briefly discussed the order. By a five to four margin, apparently, they decided informally not to try to appeal immediately, upon the basis that the right of appeal from the order to prepare a plan was doubtful. The school superintendent was instructed to prepare a desegregation plan. No express guidelines were given the superintendent. However, the views of many members expressed at the meeting were so opposed to serious and substantial desegregation that everyone including the superintendent could reasonably have concluded, as the court does, that a "minimal" plan was what was called for, and that the "plan" was essentially a prelude to anticipated disapproval and appeal. In a county and city criss-

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crossed by school bus routes for 23,000 pupils, more than twenty thousand citizens, mostly from affluent suburbia, many of whose children undoubtedly go to school on school busses, signed petitions against "involuntary" bussing of students. The frenzy of parents received a ready forum in televised meetings of the board. The staff were never directed to do any serious work on re-drawing of school zone lines, pairing of schools, combining zones, grouping of schools, conferences with the Department of Health, Education and Welfare, nor any of the other possible methods of making real progress towards desegregation.

The superintendent revealed the general terms of his plan within a few days and later presented it formally on May 8, 1969. It provided for full faculty desegregation in 1969, which the superintendent said he considered feasible. It provided moderate changes in the pupil assignment plans; and it contemplated future study of the other methods of desegregation suggested in the April 23, 1969 order.

The board then met, struck out virtually all the effective provisions of the superintendent's plan, and asked for more time from the court, which had previously been promised.

The board's committee on buildings and sites, newly re-constituted, met and voted to cancel the long standing plans for Metropolitan High School, and voted to build it as only a specialty and vocational school without including the comprehensive high school which consultants and experts, including the school board's staff and superintendent, had recommended and still recommend. No new facts except the order of court had developed to account for the sudden change of plan. The stated reason for the change was that a general high school in Second Ward (though not a vocational or technical school) would necessarily be black and

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therefore should not be built. [The Second Ward school site, where Metropolitan is scheduled to be built, is squarely in the center of the city's population; is a scant four blocks from the south boundary of its zone; and is apparently the easiest high school in town to desegregate; its boundaries could easily be re-drawn by extending its southern boundary (Morehead Street) and its eastern boundary (Queens Road) a few blocks.]

Thereafter, on May 28, 1969, the plan was filed. Volunteers were requested among the teachers; pupil transfer requests were set out; and data on the workings of the plan began to accumulate.

During the early debate over the court order, events transpired between the chairman and the superintendent which were thought by an assistant superintendent and others to threaten the superintendent's job if he pushed for compliance with the court's order. A few days before this hearing, the board committee on personnel declined to accept the superintendent's recommendation that Robert Davis, a Negro, be appointed principal of one of the schools. This was the first time such a recommendation had not been accepted. After some debate, the decision was postponed, with the superintendent requested to bring in alternate names. The publicly stated reasons for not approving the appointment were that Davis, whose training, experience and qualifications were unquestioned, is a plaintiff in this case and a member of the Negro Classroom Teachers Association and has spoken out publicly in favor of compliance wth this court's order—including one television appearance before the board itself to which the board had invited interested citizens. Davis, according to the press, was eventually confirmed for the job on June 19, 1969, but only after a "loyalty oath" had been exacted. The

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effect of the so-called "job threat" and the Davis incident, following the public statements of board members, is a clear message: School employees voice opinion contrary to the board majority on desegregation at personal risk.

2. *The June 16, 1969 hearing.*—The defendants, under the law, had the burden of showing that their plan would desegregate the schools. To carry that burden they introduced a short written brief and some statistical data and rested their case without live testimony. The plaintiffs called all members of the school board and the Rhode Island expert, Dr. Finger, who testified at the March hearing, and a few other witnesses. There was some rebuttal from the board.

3. *Findings as to General Board Policy.—*

- a) The board does not admit nor claim that it has any positive duty to promote desegregation.
- b) School sites and school improvements have not been selected nor planned to promote desegregation and the board admits no such duty.
- c) Board policy is that the Constitution is satisfied when they locate schools where children are and provide "freedom of transfer" for those who want to change schools.
- d) Despite its inclusion in the "Plan," the decision of the board about Metropolitan High School is not really a final one; several members consider the issue in doubt, and the full board has not formally considered it.

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4. *The Pupil Assignment Plan.*—The plan now proposed is the plan previously found racially discriminatory, with the addition of one element—the provision of transportation for children electing to transfer out of schools where their races are in a majority to schools where they will be in a minority. Such provision of transportation is approved.

Another provision of the plan makes high school athletes who transfer from one school to another ineligible for varsity or junior varsity athletics until they have been a year in the new school. For the current year, with the returns almost complete, only two white students out of some 59,000 have elected to transfer from white schools to black schools. Some 330 black students out of some 24,000 have elected to transfer to white schools. Only the tiniest handful of white students have ever in any year asked to transfer to black schools. The effect of the athletic penalty is obvious—it discriminates against black students who may want to transfer and take part in sports, and is no penalty on white students who show no desire for such transfers. The defendants' superintendent considers athletics an important feature of education. This penalty provision is racially discriminatory. The board is directed not to enforce it any more and to give adequate individual notice to all rising 10th, 11th and 12th grade students that they may reconsider their previous choice of schools in light of the removal of the penalty.

Freedom of transfer increases rather than decreases segregation. The school superintendent testified that there would be, net, more than 1,200 additional white students going to predominantly black schools if freedom of transfer were abolished. The use of a free transfer provision is a decision for the board; it may make desegregation more palatable to the community at large; it is not, per se,

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if the schools are desegregated, unconstitutional. Nevertheless, *desegregation of schools is something that has to be accomplished independent of freedom of transfer.* This is a fact which because of the complexity of the statistics has only become clear to the court since the previous order was issued.

5. *The Faculty Assignment Plan.*—The plan originally proposed by the superintendent would have desegregated the faculty as a routine matter in 1969. The plan proposed by the board however is not materially different from the already existing plan. It continues to rely upon voluntary transfers and it contemplates affirmative assignment of teachers to black schools only late in the day after a hopeful routine of filling vacancies (some of which do not exist) has been followed. The board has not taken a position of leadership with the teachers and the results are apparent. Only 28 out of 2,700 white teachers, and only 38 out of 900 black teachers, had on June 18, 1969 indicated a willingness to transfer to schools of the opposite race. Testimony of the board members who comprise the majority of the board suggests that they do not really contemplate substantial faculty desegregation and that they may consider figures of "10%"; or one black teacher to each white school and one white teacher to each black school; or filling vacancies from the opposite race as they arise, to be compliance with the needs of the situation. None of these ideas, of course, amounts to desegregation of the faculty. The evidence submitted by the board does not demonstrate that the faculty plan will work. Several board members said that the plan to assign teachers is not an "idle promise."

All that it takes to make the faculty plan work is timely decision by the board to implement the assignment of teach-

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ers. Board members are requested in this connection to consider the latest unanimous Supreme Court decision, *United States v. Montgomery County Board of Education* (October Term 1968), Case No. 798, decided June 2, 1969, reversing the Fifth Circuit Court of Appeals and upholding a district court order for faculty desegregation under a mathematical formula. Ruling on the faculty plan will therefore be deferred until after August 4, 1969, by which time the board is directed to file a report stating in detail what the plan has done and what the status of faculty assignments then is. The court considers the faculty assignment plan to be important and agrees with the superintendent of schools that immediate desegregation of the faculty is feasible. This is a substantial improvement which is available without arousing ghosts of "bussing," "neighborhood schools," or additional expense.

IV.

GERRYMANDERING

This issue was passed over in the previous opinion upon the belief which the court still entertains that the defendants, as a part of an overall desegregation plan, will eliminate or correct all school zones which were created or exist to enclose black or white groups of pupils or whose population is controlled for purposes of segregation. However, it may be timely to observe and the court finds as a fact that no zones have apparently been created or maintained for the purpose of promoting desegregation; that the whole plan of "building schools where the pupils are" without further control promotes segregation; and that certain schools, for example Billingsville, Second Ward, Bruns Avenue and Amay James, obviously serve school

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zones which were either created or which have been controlled so as to surround pockets of black students and that the result of these actions is discriminatory. These are not named as an exclusive list of such situations, but as illustrations of a long standing policy of control over the makeup of school population which scarcely fits any true "neighborhood school" philosophy.

* * * * *

The findings of fact in the April 23, 1969 order and all statements in this opinion are treated as findings of fact in support of the order. All of the evidence in the case is considered in support of the order.

ORDER

Based upon the evidence and upon the foregoing findings of fact the orders of the court are as follows:

1. The motion of the individual defendants to dismiss is denied.
2. No citations for contempt are made.
3. Decision on the faculty assignment plan is deferred pending receipt of a progress report from the board on or before August 4, 1969.
4. The one year penalty on transferring high school athletes is disapproved with direction as above for appropriate personal communication to rising high school students.
*
5. The provision of transportation for students transferring from a majority to a minority situation is approved.

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6. The board is directed to proceed no further with action on Metropolitan High School pending a showing by the board that the school if constructed will be adequately desegregated and a finding by the court to that effect. This is based upon the previous findings that the board's decision on Metropolitan was unduly affected by racial considerations and that the board has not accepted its affirmative legal duty to build school facilities so as to promote desegregation.

7. As to the other building projects referred to in the motion for restraint on construction, the burden remains upon the defendants to show that these programs will produce desegregation. The written material tendered by the defendants on this subject is lengthy, and does not appear to sustain that burden. However, decision on the request for injunction against projects other than Metropolitan will be delayed pending further study of the evidence.

8. It is further ordered that the defendants proceed to prepare and submit by August 4, 1969, a positive plan for desegregation of the pupils of the Charlotte-Mecklenburg school system, as originally directed on April 23, 1969. A witness, Dr. Finger, described in detail a plan for desegregation by changing certain school zone lines and merging certain schools into districts and using certain schools as feeders for others. This plan shows a high degree of realism in that it minimizes the necessity for long-range transportation and takes substantial advantage of location and makeup of populations. Local school administration consider such a plan feasible. The local school administrative staff are also better equipped than Dr.

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Finger, a "visiting fireman," to work out and put into effect a plan of this sort. It is believed that if the resources of the board can be directed as originally ordered toward preparing a Charlotte-Mecklenburg plan for the Charlotte-Mecklenburg schools, desegregation of both faculties and students may be accomplished in an orderly fashion. Counsel are requested to notify the court promptly if more time beyond August 4, 1969 is needed.

This is the 20th day of June, 1969.

JAMES B. McMILLAN
James B. McMillan
United States District Judge

**Supplemental Findings of Fact in Connection With the
Order of June 20, 1969 (Dated June 24, 1969)**

The relatively complete extent of the segregation of the schools in this system is demonstrated by study of the defendants' statistics which were attached to and included in the original opinion of this court of April 23, 1969. There are about 24,000 black students in the county. As near as can be estimated, approximately 21,000 of these attend schools within the City of Charlotte. When *Brown v. Board of Education* was decided in 1954, the City of Charlotte had less than 7,500 black students. Today within the City of Charlotte 14,086 black students attend 21 schools which are totally black or more than 99% black. An additional 2,895 black students attend six schools whose black population is between 50% and 86% black. These schools are all rapidly moving to a totally or near-totally black condition under present policies. When all this is put together and understood, it becomes clear that of the City's 21,000 or so black students, nearly 17,000 of them according to the figures, and certainly more than 17,000 when the population trends are considered, are attending racially identifiable black schools.

This the 24th day of June, 1969.

JAMES B. McMILLAN
James B. McMillan
United States District Judge

**Motion for Leave to File Supplemental Complaint,
to Add Additional Defendants and for
Temporary Restraining Order**

(Filed July 22, 1969)

Plaintiffs, by their undersigned counsel, respectfully move the Court for leave to file a Supplemental Complaint and for a temporary restraining order restraining the defendants from giving consideration or effect to and from enforcing, administering, or applying certain provisions of North Carolina General Statutes §115-176.1 and as grounds therefor show the following:

1. Plaintiffs seek, by this motion, leave to file a Supplemental Complaint, copies of which are being forwarded this day to the Court together with summonses for service upon the North Carolina State Board of Education and Dr. A. Craig Phillips, Superintendent of Public Instruction of the State of North Carolina, parties which the plaintiffs seek to add as defendants to this action. Plaintiffs have served copies of the Supplemental Complaint upon counsel for those defendants now parties to this action.
2. The Supplemental Complaint seeks injunctive and declaratory relief against the following prohibitions contained in North Carolina General Statutes §115-176.1¹
"No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio

¹ North Carolina General Statutes §115-176.1 was enacted as Chapter 1274 of the Session Laws of the 1969 North Carolina General Assembly which was ratified on July 2, 1969. A copy of the Ratified Bill is attached to the Supplemental Complaint as Exhibit A.

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of race, religion or national origins. Involuntary bussing of students in contravention of this Article is prohibited and public funds shall not be used for any such bussing."

3. For reasons stated more fully in the Supplemental Complaint, plaintiffs allege that the purpose, motive and effect of the statutory provisions complained of therein is to forbid the defendants, now parties to this action, and other school officials in the State of North Carolina from complying with existing lawful orders of this and other courts and to forbid them from complying with the requirements of the Thirteenth and Fourteenth Amendments to the Constitution of the United States. Plaintiffs allege that this is so because compulsory assignments and involuntary bussing, prohibited by North Carolina General Statutes §115-176.1, are necessary devices for complying with the orders of this Court entered on April 23, 1969, and June 20, 1969, and for complying with constitutional requirements.

4. Plaintiffs seek to add as parties-defendant, the North Carolina State Board of Education and Dr. A. Craig Phillips, the Superintendent of Public Instruction. These parties are charged by the constitution and laws of the State of North Carolina with the general supervision and administration of the public schools and the disbursement of public funds to the various public schools in North Carolina. They are thus required by North Carolina law to insure that public funds are not spent for involuntary buss-

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ing and pupil assignments. They are therefore proper and necessary parties to an adjudication of the constitutional issues raised by the plaintiffs in the Supplemental Complaint. In addition, they are proper parties to this proceeding because, they, together with local school officials have an affirmative duty to take active steps to disestablish the dual school system in Charlotte-Mecklenburg County and other administrative units throughout the State.

5. Plaintiffs, in their Supplemental Complaint, request that a three-judge Court be constituted to determine their constitutional challenge to a statute of state-wide application. This motion for a temporary restraining order is addressed to the single District Court judge hearing this case pursuant to 28 U.S.C. §2284(3).

6. Plaintiffs allege that, unless immediately restrained, the defendants will apply the statutory provisions complained of herein and will thereby fail to comply with the orders of this Court of April 23 and June 20, 1969, thus causing plaintiffs irreparable damage. In support of this allegation, the plaintiffs attach hereto the affidavit of Reginald A. Hawkins, the next friend of plaintiffs in this action.

WHEREFORE, plaintiffs respectfully pray that they be granted leave to file their Supplemental Complaint, that they be allowed to add the North Carolina State Board of Education and Dr. A. Craig Phillips, Superintendent of Public Instruction of the State of North Carolina as defendants in this action and that all defendants be restrained

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from enforcing the complained of provisions of North Carolina General Statutes §115-176.1.

Respectfully submitted,

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Attorneys for Plaintiffs

**Order Granting Leave to File Supplemental Complaint
and Adding Defendants**

Upon motion by plaintiffs for leave to file a supplemental complaint and add The North Carolina State Board of Education and Dr. A. Craig Phillips, Superintendent of Public Instruction for the State of North Carolina as defendants and it appearing to the Court that good cause is shown therefor

It is ORDERED that plaintiffs' motion for leave to file a supplemental complaint and to add The North Carolina State Board of Education and Dr. A. Craig Phillips, Superintendent of Public Instruction of the State of North Carolina as defendants is granted.

The United States Marshal is directed to serve the supplemental complaint and summons upon the above named defendants.

This 22nd day of July, 1969.

JAMES B. McMILLAN
United States District Judge